

1 SUPREME COURT: NEW YORK COUNTY  
2 TRIAL TERM : PART 75

3 -----X  
4 THE PEOPLE OF THE STATE OF NEW YORK

IND.#:

5 against-

CHARGE:  
CPW2

6 [REDACTED]  
7 Defendant.  
8 -----X

MAPP, HUNTLEY, DUNAWAY  
HEARING

9 100 Centre Street  
New York, New York 10013

10 October 19, 2022

11  
12 B E F O R E: HONORABLE ROBERT MANDELBAUM  
13 Justice of the Supreme Court

14 A P P E A R A N C E S:

15 FOR THE PEOPLE:

16 ALVIN BRAGG, ESQ.  
17 New York County District Attorney  
One Hogan Place  
18 New York, New York 10013  
BY: KAITLYN LAURIE, ESQ.  
19 Assistant District Attorney

20 FOR THE DEFENDANT:

21 LEGAL AID SOCIETY  
22 BY: SHANA KNIZHNIK, ESQ.  
23 MARIA MARTINEZ, ESQ.

24 Theresa Magniccari  
25 Senior Court Reporter

Theresa Magniccari  
Senior Court Reporter

1 THE CLERK: Calling Calendar Number 1 in on the  
2 Part 75 calendar, Indictment [REDACTED]  
3 Appearances.

4 MS. LAURIE: Good morning.

5 ADA Kaitlyn Laurie for the People.

6 MS. KNIZHNIK: Good morning.

7 For [REDACTED] Legal Aid Society, by Shana  
8 Knizhnik, K-N-I-Z-H-N-I-K.

9 THE COURT: Good morning to you both.

10 This case is on for a Mapp, Huntley, Dunaway  
11 hearing. I know that a certificate of compliance was  
12 previously filed. I take from that, that all discovery and  
13 Rosario for the hearing has been turned over?

14 MS. LAURIE: Yes, your Honor. I do have a  
15 supplemental certificate of compliance and discovery list  
16 for the court and for defense counsel.

17 THE COURT: Thank you.

18 And before we begin, how many witnesses do you  
19 have?

20 MS. LAURIE: I am sorry, your Honor.

21 THE COURT: How many witnesses?

22 MS. LAURIE: I have two witnesses, and I just have  
23 one record to make about one of my witnesses. I have been  
24 informed at 10 a.m. that he was running about an hour late.  
25 He had a late night detail in the Bronx, so he is on his

1 way now.

2 THE COURT: So you will call him second?

3 MS. LAURIE: I will be calling him second, but I  
4 did just want to touch base with him briefly. I want to  
5 show him some evidence. If I could have a break between  
6 witnesses.

7 THE COURT: Not a problem.

8 Before we start the hearing itself, just so that  
9 we don't lose track, I want to check on two things. First,  
10 I know there was additional discovery that was promised to  
11 be provided to counsel before the hearing. I take it,  
12 since you have now filed a supplemental certificate of  
13 compliance, all of that has been turned over?

14 MS. LAURIE: Yes.

15 THE COURT: The second thing is, arrangements had  
16 to be made for the defense to turn over his buccal swab,  
17 is that going to be taken today since he is here today  
18 anyway?

19 MS. KNIZHNIK: That is the plan.

20 THE COURT: You have an officer lined up that is  
21 going to do that?

22 MS. LAURIE: I do, the DANY Squad. [REDACTED]  
23 has the hearing at 10, they made themselves available  
24 before the hearing or after the hearing.

25 THE COURT: Okay. Terrific.

1 Anything else you need to say?

2 MS. KNIZHNIK: Which witness will we be waiting  
3 on?

4 MS. LAURIE: Officer Boylan is on his way.  
5 Officer Ahmed is here.

6 THE COURT: You may call your first witness.

7 MS. LAURIE: The People call Officer Ahmed to the  
8 stand.

9 Do both parties have a copy of the witness and the  
10 exhibit list?

11 THE COURT: I have a witness list, not an exhibit  
12 list.

13 I have both.

14 MS. LAURIE: Thank you.

15 THE COURT: I am sorry, Ms. Knizhnik, can you do  
16 it one more time, I am sure I just did it wrong, the  
17 pronunciation.

18 MS. KNIZHNIK: Knizhnik.

19 THE COURT: What is your extension?

20 MS. KNIZHNIK: I am sorry.

21 THE COURT: Extension.

22 MS. KNIZHNIK: 3027.

23 THE COURT: Thank you.

24 And Ms. Laurie, your extension?

25 MS. LAURIE: It's 9331.

1 THE COURT: 331?

2 MS. LAURIE: 9331.

3 THE COURT: What bureau?

4 MS. LAURIE: Trial Bureau 30.

5 THE COURT: Thank you.

6 MS. KNIZHNIK: Also, my supervisor, Maria Martinez  
7 is also here second seating for the record.

8 THE COURT: She is not going to be doing any  
9 portion of the hearing, just observing?

10 MS. KNIZHNIK: Correct.

11 THE COURT: Thank you.

12 (Witness entering courtroom.)

13 \*\*\*

14 COURT OFFICER: Step this way. Raise your right  
15 hand and face the clerk.

16 THE CLERK: Do you solemnly swear or affirm that  
17 the testimony you are about to give before this court shall  
18 be the truth the whole truth and nothing but the truth, do  
19 you so swear or affirm?

20 THE WITNESS: I do.

21 P-O-L-I-C-E O-F-F-I-C-E-R S-H-A-H-Z-E-B A-H-M-E-D,  
22 called as a witness on behalf of the People, was duly sworn by  
23 the Clerk of the Court, upon being examined, testified as  
24 follows:

25 THE CLERK: You can have a seat.

1 COURT OFFICER: Speak into the microphone.

2 MS. LAURIE: Just a logistical question, would you  
3 like me to stand at the podium.

4 THE COURT: Anywhere you are.

5 COURT OFFICER: Please state your name and spell  
6 your name.

7 THE WITNESS: First name, Shahzeb, S-H-A-H-Z-E-B.  
8 Last name Ahmed, A-H-M-E-D.

9 COURT OFFICER: Your shield number and present  
10 command.

11 THE WITNESS: Shield Number is 26865. Present  
12 command is Patrol Borough Manhattan North.

13 DIRECT EXAMINATION

14 BY MS. LAURIE:

15 Q. Good morning, Officer Ahmed. How are you?

16 A. I am good. How are you?

17 Q. Good. Thank you.

18 How long have you been a police officer for?

19 A. Approximately five years.

20 Q. And you mentioned you're an officer with Patrol Borough  
21 Manhattan North?

22 A. Correct.

23 Q. Can you just briefly describe your duties and  
24 responsibilities?

25 A. We patrol the streets of Manhattan North and we focus

1 on high crime areas.

2 Q. Generally speaking, where is Manhattan North?

3 A. Anywhere above 80th Street, east and west side.

4 Q. Now, what is your normal assignment with Patrol Borough  
5 Manhattan North?

6 A. Say it again.

7 Q. What is your normal assignment, if you have one?

8 A. We just patrol.

9 Q. And can you just describe what you mean by patrol?

10 A. We mostly focus our attention on where there are recent  
11 shootings or robberies. Anywhere there is a high crime  
12 situation going on, we mostly focus over there.

13 Q. What was the first example you gave?

14 A. Shootings.

15 Q. Okay.

16 How are you responding to a location typically?

17 A. We usually respond, it will be me and my partner, we  
18 will go in an unmarked vehicle.

19 Q. And how are you notified that there has been a  
20 shooting?

21 A. We usually listen to the radio, and other than that, we  
22 also get debriefed sometimes.

23 Q. You said debriefed?

24 A. Correct.

25 Q. And what are you patrolling for exactly in response to

1 this type of notification?

2 A. Say it again.

3 Q. What exactly would you be patrolling for in response to  
4 a notification for a shooting, for example?

5 A. Well, we'll just look at the area, who is around there,  
6 if there are big groups or anybody in particular that needs our  
7 attention.

8 Q. And does this type of investigation always end up in  
9 arrest?

10 A. Not always.

11 MS. KNIZHNIK: I would object to relevance at this  
12 point.

13 THE COURT: Sustained.

14 Q. And during your five years as a police officer, how  
15 many arrests have you made?

16 A. I have made around 100 arrests.

17 Q. How many arrests have you assisted in?

18 A. Maybe another hundred.

19 Q. Specifically, how many gun arrests have you made?

20 A. Fifteen to 16 gun arrests.

21 Q. And how many gun arrests have you assisted in?

22 A. Maybe 40 to 50.

23 Q. And have you received special training as part of your  
24 training in the Patrol Borough Manhattan North?

25 A. Yes.



1 Q. What type of special training might you have received?

2 A. One of the trainings is called public safety training.

3 Q. What does that mean?

4 A. It's pretty much like the tactics aspect of it and also  
5 identifying people that carry firearms.

6 Q. Now, officer, drawing your attention to April 23, 2022,  
7 around the hour of 11:25 to 11:30 at night, were you working at  
8 that date and time?

9 A. Yes.

10 Q. Do you recall what your shift was?

11 A. Yes.

12 Q. What was it?

13 A. It was a 5:30 p.m. to 0205 a.m.

14 Q. And what were your responsibilities that night?

15 A. Patrol.

16 Q. Were you part of any specific team or precinct?

17 A. Same thing, so Patrol Borough Manhattan North, and we  
18 go out in unmarked cars.

19 THE COURT: I didn't hear the last thing you said.

20 THE WITNESS: Unmarked cars.

21 Q. And were you in a specific precinct?

22 A. We were in the confines of the 23rd Precinct.

23 Q. Can you describe what area of Manhattan that covers?

24 A. Upper East Side.

25 Q. And were you working with other officers?

1 A. Yes.

2 Q. Who were you working with?

3 A. I was working with Officer Boylan and Officer Burgos.

4 Q. And were you and the other officers in plainclothes or  
5 in uniform?

6 A. Uniform.

7 Q. And you mentioned you were in an unmarked police car,  
8 were you on foot on patrol?

9 A. No, we're usually in cars.

10 Q. Now, drawing your attention to 11:25 p.m. on April 23,  
11 2022, where were you at that time?

12 A. We were in the confines of the 23rd Precinct.

13 Q. Do you recall what address you were at or what street  
14 were you on?

15 A. Around 110th and Lenox.

16 Q. Lexington Avenue?

17 A. Lexington Avenue.

18 Q. Lexington?

19 A. Yes.

20 Q. And can you just describe the layout of that  
21 intersection between Lexington Avenue and East 110th Street?

22 A. Explain the area?

23 Q. Describe the layout of the intersection.

24 A. It's just like a regular intersection. There is delis  
25 on the two corners. On one of the other corner there is like a

1 housing building and it's just a very commercial well lit area.

2 Q. And what about the streets, are they one-way streets?

3 A. One way street.

4 Q. And what brought you to the vicinity of East 110th  
5 Street and Lexington Avenue?

6 A. Earlier during the day there was a shots fired over  
7 there.

8 MS. KNIZHNIK: Objection, your Honor.

9 THE COURT: Overruled.

10 MS. KNIZHNIK: May I be heard?

11 THE COURT: Yes.

12 MS. KNIZHNIK: Your Honor, the existence of the  
13 ShotSpotter in the case is something that ADA Laurie and I  
14 have discussed, it was actually the subject part of the  
15 discovery dispute here. I have previously been asking  
16 numerous times for additional discovery related to that  
17 ShotSpotter notification. ADA Laurie had informed me  
18 multiple times that that ShotSpotter notification was not  
19 relevant to this case because [REDACTED] was not suspected  
20 of being related to that ShotSpotter notification. There  
21 were descriptions that were provided that [REDACTED]  
22 actively completely did not match and so I would object to  
23 the inclusion.

24 And, also, it was two hours earlier.

25 THE COURT: He is simply explaining why he was in

1 the neighborhood. He hasn't attributed any culpable  
2 conduct resulting from the ShotSpotter to your client.

3 MS. KNIZHNIK: Yes. Your Honor, I believe this is  
4 being used to bolster the suspicion that the prosecution  
5 will argue existed in this ShotSpotter based on the earlier  
6 ShotSpotter notification. And so based on the information  
7 that I have just argued and provided that has been provided  
8 by ADA Laurie, I would argue that this would not be  
9 relevant to this suspicion in this case.

10 THE COURT: Overruled.

11 Can I ask, you filed a supplemental certificate of  
12 compliance, has all discovery not in fact been turned over  
13 in this case?

14 MS. LAURIE: Your Honor, it's our position the  
15 discovery related to the ShotSpotter is not specifically  
16 related. In the ECMS files there are a multitude of files  
17 containing information about suspects in a separate  
18 investigation. It's not relevant to this case.

19 THE COURT: All that has not been turned over is  
20 the reports related to the other suspects in a different  
21 incident earlier on the same day?

22 MS. LAURIE: That's correct.

23 THE COURT: Ask your next question.

24 MS. LAURIE: Thank you.

25 Q. What is a ShotSpotter alert?

1           A.     What is a ShotSpotter alert, the NYPD has these  
2 machines that detect shots fired, so if there are some shots  
3 run off in the area, the ShotSpotter would pick up on that and  
4 that would alert us on our phones and that's how we would know  
5 if the ShotSpotter actually occurred.

6           Q.     And how many times a week or how often would you say  
7 you get a report of a ShotSpotter?

8                     MS. KNIZHNIK:  Objection, relevance.

9                     THE COURT:  Sustained.

10          Q.     So you did learn of the ShotSpotter on April 23, 2022,  
11 do you recall what time it was at?

12          A.     It was around 9, 9:30.

13          Q.     And what was the vicinity of that ShotSpotter?

14                     THE COURT:  P.m.?

15                     THE WITNESS:  P.m.

16          Q.     What was the vicinity of that ShotSpotter alert, if you  
17 recall?

18          A.     It was on 112th and Lexington.

19          Q.     So from about 9, 9:30 p.m. on, once you learned of the  
20 ShotSpotter notification, what were you doing after?

21          A.     We started making our way toward the 23rd Precinct  
22 confines.

23          Q.     Where had you been coming from?

24          A.     We were at the base.

25          Q.     Which is where?

1 A. Which is in the confines of the 26th Precinct.

2 Q. And did you know of how many rounds or shots fired went  
3 off in the ShotSpotter?

4 A. Initially I did not know how many rounds were fired.

5 Q. Did you know of any suspects at the time?

6 A. No.

7 Q. Did you speak to anyone with the NYPD on 112th and  
8 Lexington who might have been investigating this?

9 A. We passed by the area and that's where we saw the ECT  
10 individuals and we had confirmed that it was a confirmed shots  
11 fired.

12 Q. And what if any other investigative information did you  
13 have at that time?

14 A. That was it.

15 Q. So you didn't know if anyone -- I am sorry, withdrawn.

16 Did you know if anyone had been arrested yet in  
17 relation to that ShotSpotter?

18 A. No.

19 THE COURT: No, you didn't know, or no, they had  
20 not?

21 THE WITNESS: No, I didn't know.

22 MS. KNIZHNIK: Objection, relevance.

23 THE COURT: Sustained.

24 Q. Did any other officers beside you, Officer Boylan and  
25 Burgos respond to this area in response to the ShotSpotter

1 notification?

2 A. They were with me in the car, yes.

3 MS. KNIZHNIK: Objection, lacks personal knowledge  
4 as to whether there were other cars.

5 THE COURT: Overruled.

6 MS. KNIZHNIK: I believe the question was whether  
7 other officers responded.

8 THE COURT: Overruled.

9 Q. Can you clarify your answer.

10 A. Officer Boylan and Officer Burgos were with me in the  
11 car and we as a team were deployed to the 23rd Precinct.

12 Q. And did you see any other teams like yourself?

13 A. Correct.

14 Q. In the area?

15 A. Yes.

16 MS. KNIZHNIK: Objection.

17 THE COURT: Overruled.

18 A. There was present cops over there. We were over there.  
19 The officers on scene had also put over this ShotSpotter as  
20 confirmed, so whenever something like this happens, usually  
21 everybody responds to that location.

22 Q. And so around 11:25 p.m. you mentioned previously you  
23 were at the intersection of Lexington Avenue and East 110th  
24 Street, is that in New York County?

25 A. Yes.

1 Q. And do you know what direction or recall what direction  
2 you were facing or driving?

3 A. South on Lexington.

4 Q. And what did you observe at that time?

5 A. We observed an individual walking towards the corner on  
6 110th and Lexington.

7 Q. Do you recall from what direction?

8 A. Yes, he was walking west on 110th.

9 Q. Do you see that individual in the courtroom today?

10 A. Yes.

11 Q. Could you please point to him and indicate an article  
12 of clothing he is wearing.

13 A. Red hoody.

14 MS. LAURIE: And for the record, the witness has  
15 identified the defendant.

16 Q. Now, why did this individual stand out to you?

17 I am sorry, withdrawn.

18 Can you describe what happened when you were at that  
19 intersection?

20 A. Sure. When we were at that intersection, I observed  
21 the individual along with another person and two guys on Citi  
22 Bikes.

23 THE COURT: Two what?

24 THE WITNESS: Two guys on Citi Bikes, so two  
25 individuals.



1 Q. And they were walking or riding their bikes westbound  
2 towards --

3 A. The intersection.

4 MS. KNIZHNIK: Objection, leading.

5 THE COURT: Sustained.

6 Where were they going?

7 THE WITNESS: Westbound.

8 Q. Towards what street?

9 A. Towards Lexington Street.

10 Q. And what, if anything, did you notice about them?

11 A. I observed that the defendant was looking around from  
12 shoulder to shoulder continuously. The female that was talking  
13 to him, he wasn't even making eye contact with her, he was just  
14 very vigilant of his surroundings looking shoulder to shoulder.

15 Q. Was there anything about his demeanor that stood out to  
16 you?

17 A. The same thing, that he kept looking around a lot and  
18 that he had a fanny pack across his bike.

19 Q. And by comparison, what were his friends doing or the  
20 people he was with?

21 A. The female was making conversation with him. I  
22 realized that he was not making eye contact with her.

23 Q. And was he walking behind them or in front of them?

24 A. At that point they were stationary.

25 Q. And you mentioned the fanny pack, why is that relevant

1 or notable to you?

2 A. The reason why I mentioned the fanny pack is because it  
3 was across his body. It was very heavy and there was like the  
4 grip or handle protruding outside from the top.

5 THE COURT: Like what?

6 THE WITNESS: The grip.

7 MS. KNIZHNIK: I could not understand the word he  
8 said.

9 THE COURT: Grip, G-R-I-P.

10 Q. When you say heavy, how did you know it looked heavy?

11 A. Because once it wasn't swinging, when fanny packs are  
12 light or there is not something heavy in there, they would swing  
13 a little bit or move as you are moving. The defendant's fanny  
14 pack was not moving at all. It was quite stationary, that's  
15 when we knew it was heavy.

16 Another thing was the top of the fanny pack had the  
17 rectangular object protruding out. That also made me believe  
18 there is something in the fanny pack.

19 Q. And can you just describe where on the defendant he was  
20 wearing the bag and how he was wearing it?

21 A. He was wearing it across his body.

22 Q. So?

23 A. So diagonally.

24 Q. Over his one shoulder?

25 A. Correct.

1 Q. How long did you observe the defendant and this group  
2 for?

3 A. Maybe a little over a minute.

4 Q. And you mentioned -- I am sorry, was the block well lit  
5 from where you were viewing?

6 A. Yes.

7 Q. Were there any cars obstructing your view?

8 A. No. My view of defendant?

9 Q. Sorry.

10 A. My view of the defendant?

11 Q. Yes.

12 A. No.

13 Q. Was anybody obstructing your view of the defendant  
14 during that time you were observing him?

15 A. No.

16 Q. And at what point did you or another officer approach  
17 the defendant?

18 A. Shortly after observing him and noticing that his  
19 behavior continued, combined with the fact that his fanny pack  
20 had the rectangular object sticking out, that's when we decided  
21 to approach.

22 Q. And you were in your vehicle at that time?

23 A. Correct.

24 Q. So where did you park the car in relation to where they  
25 were standing?

1           A.    At first we were on a red light right before, so north  
2 of the defendant, that's where we observed him for like maybe  
3 20, 30 seconds. Then we crossed over to the intersection  
4 towards the southwest side. We stayed there for a few seconds  
5 more and continued to observe him and then we turned the car  
6 around and approached the defendant.

7           Q.    And who approached the defendant first?

8           A.    Officer Boylan.

9                   THE COURT: Officer who?

10                  THE WITNESS: Boylan.

11          Q.    And how long after did you approach him?

12          A.    Maybe five to ten seconds after.

13          Q.    Did your vehicle have any police sirens on?

14          A.    We do have police lights.

15          Q.    Were they flashing?

16          A.    No.

17          Q.    And there are no sirens, no noise coming from the  
18 vehicle?

19          A.    No.

20          Q.    Did either you or Officer Boylan have your weapon  
21 drawn?

22          A.    No.

23                  THE COURT: Did you get out of the car to approach  
24 on foot or you pulled up in the car?

25                  THE WITNESS: We pulled up on the intersection and

1           then I got out of the vehicle and approached.

2                   THE COURT: As did Officer Boylan?

3                   THE WITNESS: Yes.

4           Q.    What did you observe, if anything, when you approached?

5           A.    I am sorry. Officer Boylan got out of the vehicle  
6 before I did.

7           Q.    What, if anything, did you observe as you got closer to  
8 the defendant?

9           A.    I was able to have a better look at the fanny pack as I  
10 got closer.

11          Q.    Can you describe what you saw?

12          A.    The same, that the fanny pack seemed heavy, the  
13 rectangular shape was very prominent. He was standing.

14                   THE COURT: What shape?

15                   THE WITNESS: The rectangular shape was more  
16 prominent and the lighting over there was very good.

17          Q.    And what color was the fanny pack?

18          A.    Black.

19          Q.    What did the material look like?

20          A.    Of the fanny pack?

21          Q.    Correct.

22          A.    What did the material look like?

23          Q.    Yes.

24          A.    Like a regular fanny pack. I am not sure what they're  
25 made of.

1 Q. Was it leather?

2 A. No, it wasn't leather. It was regular cloth, the  
3 cotton, I don't know what they're made of.

4 Q. You said it was black?

5 A. Correct.

6 Q. What color was his jacket or sweatshirt?

7 A. I don't recall.

8 Q. Was it black?

9 A. His hoody, his jacket, I don't remember.

10 Q. And what did you see happen when Officer Boylan  
11 approached the defendant?

12 A. When Officer Boylan approached, they had a little  
13 conversation between them and then when Officer Boylan  
14 approached, he reached out towards the fanny pack. That's when  
15 the defendant grabbed the fanny pack and prevented Officer  
16 Boylan from feeling the fanny pack. He also took a step back,  
17 and that's when I was approaching.

18 Q. Did you hear what Officer Boylan and the defendant said  
19 to each other?

20 A. I believe Officer Boylan asked him what he has in the  
21 fanny pack.

22 Q. Did you hear or observe what the defendant replied?

23 A. The defendant said "nothing."

24 Q. Did you hear the defendant say anything else at that  
25 time?

1           A.    Did he say anything else at that time?  They were  
2 talking back and forth, but these were the few things I was able  
3 to pick up on.

4                   THE COURT:  Can you repeat that.

5                   THE WITNESS:  They were having a few words back  
6 and forth.  This was the thing I was able to pick up on.

7           Q.    By nothing, when the defendant said "nothing," he  
8 affirmatively said, "I have nothing in the fanny pack?"

9                   MS. KNIZHNIK:  Objection, leading.

10                  THE COURT:  Overruled.

11                  Is that your testimony?

12                  THE WITNESS:  Say what.

13           Q.    I want to clarify what you said the defendant  
14 replied.

15                  THE COURT:  Did he reply in that answer, not say  
16 anything, or did he affirmatively say the word "nothing?"

17                  THE WITNESS:  He affirmatively said the word  
18 nothing.

19           Q.    And you observed the defendant step back, what do you  
20 mean by that?

21           A.    We call it blading the body, which is when you take one  
22 step back to pivot your body on your hips so that the object  
23 that the officer is trying to frisk is away from the officer's  
24 reach.

25                  MS. KNIZHNIK:  Objection, speculation as to my

1 client's state of mind.

2 THE COURT: Overruled.

3 Q. And now at that point were either your's or Officer  
4 Boylan's gun drawn?

5 A. No.

6 Q. When the defendant had stepped back, what did Officer  
7 Boylan do next?

8 A. He was able to frisk the fanny pack and then he opened  
9 it up, we both saw that the firearm was in there, and that's  
10 when he closed it and we placed the defendant under arrest.

11 Q. When you observed the frisk occur, how far away from  
12 the defendant were you standing?

13 A. How far away was I from the defendant, maybe like two  
14 steps.

15 Q. Two steps?

16 A. Correct.

17 Q. And when you say frisk, can you describe what you saw,  
18 what do you mean by frisk?

19 A. Officer Boylan reached out his hand and felt the fanny  
20 pack, like what is inside the fanny pack.

21 Q. And that was over the cloth material of the fanny pack?

22 A. Correct.

23 Q. And how did the fanny pack look when you observed the  
24 frisk?

25 A. Same as before, like it was heavy, the rectangular



1 object was still protruding out from the top.

2 Q. At that point did you suspect that it looked like a  
3 firearm?

4 A. Correct.

5 Q. Was there any other indication from that that made you  
6 think that?

7 THE COURT: Could you please read back the last  
8 few questions.

9 (Whereupon, the Official Court Reporter read back  
10 the referred to testimony.)

11 Q. To clarify the last question, at what point did you  
12 suspect that it looked like a firearm?

13 A. The fanny pack itself or the combined?

14 Q. Just at what point when you are observing the defendant  
15 and the interaction.

16 A. When, the fact of his behavior, he was looking from  
17 shoulder to shoulder, being vigilant around Officer Boylan,  
18 making no contact with the female that is talking to him.  
19 Combine that with the fanny pack, the way it was shaped, the  
20 rectangular object protruding outwards from the top, when I put  
21 all these things together, I was able to pretty much deduct  
22 there might be a firearm in there.

23 Q. And by describing it like a rectangular object, was it  
24 a hard object?

25 A. Correct.

1 Q. Did it look pointy?

2 MS. KNIZHNIK: Objection, heading.

3 THE COURT: Sustained.

4 Q. How did you know that this wasn't some other type of  
5 hard object?

6 A. You don't.

7 Q. In your experience is his fanny pack like the one he  
8 was wearing large enough to conceal a firearm?

9 A. Yes.

10 Q. And in your experience are fanny packs like this what  
11 people typically store a firearm in?

12 MS. KNIZHNIK: Objection.

13 THE COURT: Sustained.

14 Q. In any of your past arrests you have made, in your  
15 experience or in your past arrests, what types of bags are  
16 firearms typically secured in?

17 MS. KNIZHNIK: Objection, relevance.

18 THE COURT: Overruled.

19 A. Fanny packs are usually common where firearms are  
20 carried in.

21 Q. What was the last part?

22 A. Where firearms are carried in.

23 Q. So after you observed Officer Boylan touch the fanny  
24 pack, what happened next?

25 A. Officer Boylan opened the zipper of the fanny pack, I

1 saw the firearm that was inside. Officer Boylan closed the  
2 zipper and we proceeded to place him under arrest.

3 Q. What part of the firearm did you see?

4 A. The body of the grip where the magazine goes.

5 Q. Was the defendant compliant with you and Officer Boylan  
6 at that point?

7 A. No.

8 MS. KNIZHNIK: Objection.

9 THE COURT: Overruled.

10 Q. Did he ever try to run away?

11 A. He did not want to get in the car.

12 Q. Did he try to continue to move his body away?

13 A. Correct.

14 MS. KNIZHNIK: Objection, leading.

15 THE COURT: Sustained.

16 Don't lead the witness.

17 Q. Officer, I am going to show you what has been premarked  
18 Exhibit 1 for identification. This is a USB. Do you recognize  
19 it?

20 A. Yes.

21 Q. How do you recognize it?

22 A. This is where the footage is.

23 Q. What kind of footage?

24 A. The body cam footage.

25 Q. And is it also video surveillance footage?

1 A. Yes, from the store.

2 Q. Where is the store located?

3 A. On 110th and Lexington.

4 Q. Does this surveillance video footage fairly and  
5 accurately represent everything that happened with you in it?

6 A. Correct.

7 Q. To clarify, you are in this video surveillance footage?

8 A. Yes.

9 MS. LAURIE: Your Honor, I would like to offer  
10 People's 1 marked for identification into evidence and also  
11 to publish it.

12 THE COURT: Any objection?

13 MS. KNIZHNIK: No.

14 THE COURT: People's 1 is received in evidence.

15 (Whereupon, People's Exhibit 1 was received and  
16 marked into evidence.)

17 MS. LAURIE: Thank you.

18 Your Honor, can you see the video on your screen?

19 THE COURT: Well, I can see your file explorer. I  
20 don't see a video.

21 Now I see the video.

22 MS. LAURIE: I am going to publish the video  
23 starting at zero seconds until 3 minutes and 48 seconds.

24 (Whereupon, People's Exhibit 1, the video, was  
25 played in open court.)

1 Q. Office Ahmed, can you see the video?

2 A. Yes.

3 MS. LAURIE: I'm going to continue playing at 22  
4 seconds.

5 (Whereupon, People's Exhibit 1 was continued to be  
6 played in open court.)

7 Q. Officer, I am pausing the video at one minute and 25  
8 seconds, do you see yourself in the video?

9 A. Yes.

10 Q. What are you doing?

11 A. I have just gotten out of my car and approaching  
12 Officer Boylan and the defendant.

13 MS. LAURIE: I am going to resume playing now.

14 (Whereupon, People's Exhibit 1 continued to be  
15 played in open court.)

16 Q. I actually have one more question. In relation to  
17 where you are, where is the defendant?

18 A. Like five foot steps away.

19 Q. Can you describe who the defendant is in this video?

20 A. Red hoody and the red snap back cap.

21 MS. LAURIE: I am pausing the video at 3 minutes  
22 and 20 seconds.

23 Q. Officer Ahmed, I am now showing you what has been  
24 premarked Exhibit 2 for identification. Do you recognize this?

25 A. Yes.

1 Q. What is it?

2 A. This is the same fanny pack that the defendant was  
3 wearing.

4 Q. And how do you recognize it?

5 A. Because I vouchered it and retrieved it from the  
6 Property Clerk.

7 Q. Is this fanny back in the same condition as when you  
8 vouchered it?

9 A. Yes.

10 MS. LAURIE: Your Honor, I now officer People's  
11 Exhibit 2 into evidence.

12 THE COURT: Any objection?

13 MS. KNIZHNIK: No.

14 THE COURT: People's 2 is received in evidence.

15 (Whereupon, People's Exhibit 2 was received into  
16 evidence.)

17 MS. LAURIE: Thank you.

18 Q. Officer, approximately how big is the fanny pack  
19 compared to the size of the firearm you saw?

20 A. Relatively small, if not the same.

21 Q. And now I am going to show you what has been premarked  
22 for identification as Exhibit 3. Do you recognize this?

23 A. Yes.

24 Q. What is this?

25 A. This is the firearm we recovered from the defendant.

1 Q. And is it a photograph of the firearm?

2 A. Yes.

3 Q. Does it fairly and accurately represent what the  
4 firearm looked like?

5 A. Yes.

6 MS. LAURIE: Your Honor, I now offer People's  
7 Exhibit 3 for identification into evidence.

8 MS. KNIZHNIK: No objection.

9 THE COURT: People's 3 is received in evidence.

10 (Whereupon, People's Exhibit 3 was received into  
11 evidence.)

12 Q. Officer, how large is the firearm?

13 A. It's an average size, a pistol that's usually carried  
14 by one hand. It was relatively heavy though.

15 MS. LAURIE: Your Honor, I would like to publish  
16 this or I can also just --

17 THE COURT: Go ahead.

18 Q. Officer, just for size, what is the firearm sitting on  
19 top of?

20 A. A full size plain paper.

21 Q. Was the defendant saying anything to you while he was  
22 being handcuffed?

23 A. He was very vocal. He mentioned that he had it for  
24 protection while we were transporting him back to the precinct.  
25 He was very -- did not want to say in one spot. We almost had

1 to --

2 THE COURT: He was very what?

3 THE WITNESS: He did not want to stay in one  
4 place.

5 Q. And the fanny pack, how was it recovered?

6 A. I took it off of him.

7 Q. And did you speak to the defendant's friends that he  
8 was with?

9 A. Did I speak to the friends at the scene?

10 Q. Yes.

11 A. Yeah. I was trying to explain to the female to relax  
12 and that there was a ShotSpotter earlier and that's why we're  
13 here.

14 Q. Did they have any bags on them?

15 A. Did they have any --

16 Q. Bags.

17 A. Not that I am aware of.

18 Q. Did you or the other officers pat either of the friends  
19 down?

20 MS. KNIZHNIK: Objection, relevance.

21 THE COURT: Sustained.

22 Q. Was the defendant the only person you arrested that  
23 night?

24 A. Yes.

25 Q. And why was he the only person arrested, not anyone



1 else in the group?

2 MS. KNIZHNIK: Objection.

3 THE COURT: Sustained.

4 When the defendant stated during transport that he  
5 had it for protection, what was that in response to?

6 THE WITNESS: He was just saying things on his  
7 own.

8 THE COURT: You didn't ask him any questions?

9 THE WITNESS: No.

10 MS. LAURIE: Your Honor, I have no further  
11 questions for this witness.

12 THE COURT: Ms. Knizhnik.

13 MS. KNIZHNIK: Your Honor, can we have a five  
14 minute break just to confer with co-counsel?

15 THE COURT: Go ahead.

16 MS. KNIZHNIK: Thank you.

17 (Brief recess.)

18 \*\*\*

19 MS. KNIZHNIK: May I proceed?

20 THE COURT: Yes, please.

21 CROSS EXAMINATION

22 BY MS. KNIZHNIK:

23 Q. Good morning, Officer Ahmed.

24 A. Good morning.

25 Q. Now, as you testified on direct examination, you first

1 observed [REDACTED] walking west on East 110th Street, correct?

2 A. Correct.

3 Q. You and the other officers that you were with were  
4 across the street, correct?

5 A. Yes.

6 Q. And you said you were on the northwest corner?

7 A. Yes.

8 Q. Of 110th and Lexington, right?

9 A. Yes.

10 Q. Lexington Avenue runs southbound one way, correct?

11 A. Yes.

12 Q. There are two lanes of southbound traffic on Lexington  
13 Avenue?

14 A. Yes.

15 Q. And there is a parking lane on the right side of the  
16 street?

17 A. Yes.

18 Q. And there is also a parking lane on the left side of  
19 the street, correct?

20 A. Yes.

21 Q. When you first arrived at that location, you were on  
22 the right side, essentially in the parking lane of the right  
23 side parking or the west parking lane of Lexington Avenue,  
24 correct?

25 A. We were in the right lane of Lexington, so if you are

1 saying there is a parking lane on the left side and the right  
2 side, those will be the extra parking lanes.

3 Q. Right, the right side when you are facing south, so  
4 that would be the west?

5 A. Yes.

6 Q. And it's fair to say there were other people in the  
7 vicinity at the time that you observed [REDACTED]?

8 A. Yes.

9 Q. You described the fanny pack on direct examination, you  
10 stated that you observed something sticking out or protruding,  
11 correct?

12 A. Yes.

13 Q. Just to be clear, the fanny pack was closed, right?

14 A. It was zipped.

15 Q. It was zipped, right?

16 A. Yes.

17 Q. There was nothing coming out visibly exterior to the  
18 fanny pack itself?

19 A. So when I say protruding out, I was able to see the  
20 shape outwards while the fanny pack was zipped.

21 Q. That was inside of the fanny pack?

22 A. Yes.

23 MS. KNIZHNIK: Permission to retrieve People's  
24 Exhibit 2, the fanny pack.

25 Q. Now, on direct examination, Officer Ahmed, you stated

1 that the fanny pack was regular cloth material; is that right?

2 A. Yes.

3 Q. It's fair to say that in fact this material of the  
4 fanny pack has some padding to it, right?

5 A. Yes.

6 Q. So it's not just a thin layer as some fanny packs are  
7 with just layers of cloth, correct?

8 A. I can say that, yeah.

9 Q. In fact, it has a pattern?

10 A. On the front, yes.

11 Q. And, in fact, there are two pockets in this fanny pack,  
12 right?

13 A. Yes.

14 Q. There is a back pocket?

15 A. Yes.

16 Q. And that's where the firearm was ultimately when you  
17 found the firearm ultimately?

18 A. Yes.

19 Q. There is also a front pocket that is toward the right?

20 A. Yes.

21 Q. And you vouchered a number of items that you found in  
22 the fanny pack, correct?

23 A. Yes.

24 Q. That was in addition to the firearm, correct?

25 A. Right.

1 Q. In fact, you would describe the fanny pack as stuffed,  
2 correct?

3 A. Yes.

4 Q. And some of those items included a marijuana grinder,  
5 correct?

6 A. Yes.

7 Q. House keys?

8 A. Yes.

9 Q. A quantity of marijuana?

10 A. Yes.

11 Q. There was a tube of tobacco as well?

12 A. Yes.

13 Q. There was a lighter?

14 A. Yes.

15 Q. There was an Apple air pods case?

16 A. Yes.

17 Q. There was an i-Phone charger?

18 A. I don't remember exactly what was in there, but I  
19 vouchered it, yes.

20 Q. Just a moment.

21 Now, you were wearing a body camera on the night of  
22 April 23rd, correct?

23 A. Yes.

24 MS. KNIZHNIK: Your Honor, I believe that the  
25 prosecution does have a copy of Officer Ahmed's body camera

1           footage, I don't know if they're intending to offer it on  
2           the second witness.

3                   MS. LAURIE: I have the body cam, if you want to  
4           play it.

5                   MS. KNIZHNIK: I have a copy as well. I just  
6           wanted to clarify.

7                   It's not on the same USB that you already turned  
8           over?

9                   MS. LAURIE: It is.

10                  MS. KNIZHNIK: You entered the entire thing?

11                  MS. LAURIE: I only entered the surveillance  
12       video. I was going to offer Officer Boylan's body cam.

13                  MS. KNIZHNIK: Officer Ahmed's body cam is also on  
14       the body camera?

15                  MS. LAURIE: Yes, it hasn't been admitted yet.

16                  MS. KNIZHNIK: I have a copy of the body camera.

17                  THE COURT: It's fine if you want to offer  
18       something that is already in evidence, it's within your  
19       right.

20       Q.    So you reviewed your body camera footage in this case?

21       A.    Yes.

22       Q.    And you have reviewed specifically the file that the  
23       prosecution, the District Attorney's office has of your body  
24       camera footage on that USB that you described on direct  
25       examination?

1 A. Yes.

2 Q. And that footage is a fair and accurate representation  
3 of the events that occurred on the night in question, right?

4 A. Yes.

5 MS. KNIZHNIK: Your Honor, at this point we would  
6 move to enter the file of Officer Ahmed's body camera  
7 footage.

8 THE COURT: As Defendant's A?

9 MS. KNIZHNIK: As Defendant's A.

10 THE COURT: Any objection?

11 MS. LAURIE: No objection.

12 THE COURT: Defendant's A is received in evidence.

13 (Whereupon, Defendant's Exhibit A was received  
14 into evidence.)

15 MS. KNIZHNIK: Permission to publish and play the  
16 body camera.

17 THE COURT: Yes.

18 MS. KHIZHNIK: Just for the record, the body  
19 camera footage of Officer Ahmed is now playing.

20 (Whereupon, Defendant's Exhibit A was received  
21 into evidence.)

22 THE COURT: Do I need to watch an elbow in the  
23 car?

24 MS. KNIZHNIK: I am sorry.

25 THE COURT: Do I need to watch someone's elbow in

1 the car?

2 MS. KNIZHNIK: It's not that long. We wouldn't  
3 play all 12 minutes.

4 For the record, the video is now paused at one  
5 minute and four seconds.

6 Q. Officer Ahmed, the sound that we just heard, the  
7 beeping, as well as the audio of it just came on, that is  
8 indicating that you have just turned off your body camera  
9 recording, correct?

10 A. Correct.

11 Q. And that is at the one minute mark of this video,  
12 correct?

13 A. Yes.

14 Q. And you're aware that the NYPD Patrol Guide dictates  
15 that you activate your body worn camera prior to any interaction  
16 with persons suspected of criminal activity, correct?

17 A. It's actually as soon as it's feasible.

18 Q. And is it your testimony that it was not feasible to  
19 turn on the body camera earlier at this point?

20 A. Correct.

21 Q. You are also aware that the body camera Patrol Guide  
22 dictates that you activate your body worn camera prior to all  
23 levels of investigative encounters, not just full blown arrests,  
24 correct?

25 A. Right, but that was recently established.



1 Q. I am sorry.

2 A. That was recently established.

3 Q. That was recently established?

4 A. Correct, that was not always the case.

5 Q. So is it your testimony that it wasn't the case during  
6 the time of this arrest in April of 2022?

7 A. At this point I think I am not one hundred percent sure  
8 at this point whether it was established that all levels of  
9 encounter were to be recorded.

10 MS. KNIZHNIK: Your Honor, at this point I have a  
11 screen shot still from Officer Ahmed's body camera footage.  
12 I am showing counsel.

13 May a copy be given to the witness?

14 THE COURT: Yes.

15 Mark it for identification as Defendant's B.

16 Q. Officer Ahmed, that is a still or screen shot from your  
17 body camera footage on the night in question, correct?

18 A. Yes.

19 Q. It's a fair and accurate representation of that  
20 particular moment during the interaction, correct?

21 A. Yes.

22 MS. KNIZHNIK: We move to enter Defendant's B into  
23 evidence.

24 THE COURT: Any objection?

25 MS. LAURIE: No objection.

1 THE COURT: Defendant's B is received in evidence.  
2 (Whereupon, Defendant's B was received into  
3 evidence.)

4 THE COURT: Anything else?

5 MS. KNIZHNIK: No further questions.

6 THE COURT: Did you want to publish Defendant's B  
7 to me?

8 MS. KNIZHNIK: Yes.

9 THE COURT: Thank you.

10 Any redirect?

11 MS. LAURIE: No redirect, your Honor.

12 THE COURT: Thank you, officer.

13 You may step down.

14 (Witness excused.)

15 \*\*\*

16 THE COURT: You may call your next witness.

17 MS. LAURIE: Your Honor --

18 THE COURT: You need a minute, go ahead.

19 MS. LAURIE: Thank you.

20 MS. MARTINEZ: Can we have a restroom break?

21 THE COURT: Sure.

22 MS. MARTINEZ: Thank you.

23 (Brief recess.)

24 \*\*\*

25 MS. LAURIE: Your Honor, thank you.

1 THE COURT: Certainly.

2 You may call your next witness.

3 MS. LAURIE: The People now call Police Officer  
4 Boylan to the stand.

5 (Witness entering courtroom.)

6 \*\*\*

7 COURT OFFICER: Step up here. Stand in front of  
8 the chair. Raise your right hand. Face the clerk.

9 THE CLERK: Do you solemnly swear or affirm that  
10 the testimony that you are about to give before this court  
11 shall be the truth the whole truth and nothing but the  
12 truth, do you so swear or affirm?

13 THE WITNESS: Yes, I do.

14 P-O-L-I-C-E O-F-F-I-C-E-R D-A-N-I-E-L B-O-Y-L-A-N, called  
15 as a witness on behalf of the People, was duly sworn by the  
16 Clerk of the Court, upon being examined, testified as follows:

17 THE CLERK: You can have a seat. Try to get  
18 closer to the microphone.

19 COURT OFFICER: Please state and spell your name.

20 THE WITNESS: Officer Boylan, B-O-Y-L-A-N.

21 COURT OFFICER: Your shield number and current  
22 command.

23 THE WITNESS: Shield Number 13957. Current  
24 command is the 52nd Detective Squad.

25 DIRECT EXAMINATION

1 BY MS. LAURIE:

2 Q. Good morning, officer.

3 A. Good morning.

4 Q. How long have you been a police officer?

5 A. About seven years.

6 Q. And what is your current command?

7 A. The 52nd Precinct Detective Squad.

8 Q. How long have you been with the Detective Squad?

9 A. About three months.

10 Q. What was your prior command to that?

11 A. Patrol Borough Manhattan North Public Safety.

12 Q. And how long were you with Patrol Borough Manhattan  
13 North?

14 A. For about six months.

15 Q. Can you just describe your duties and responsibilities  
16 as an officer with Patrol Borough Manhattan North?

17 A. Yeah. It was basically patrol. We get deployed to  
18 high crime areas, mostly shootings, robberies, particularly  
19 shootings.

20 Q. And what did you mean by a patrol?

21 A. Well, we were assigned to Patrol Borough, but what I  
22 mean, our duties, if there was a high crime area, for instance,  
23 there was a shooting in the area, they would send us to that.  
24 We would patrol the area. We were basically a backup to patrol.  
25 They would answer the radio runs and we would back them up with

1 patrol.

2 Q. How many arrests have you made during your career as a  
3 police officer?

4 A. I have made myself about 150. I have been involved in  
5 probably over 300, 400.

6 Q. And how many arrests for guns have you made?

7 A. Myself, probably three. But, again, I have probably  
8 been involved in 20, 30.

9 Q. You have assisted in about 20 to 30 you said?

10 A. Yes.

11 Q. And did you receive any specialized training as part of  
12 Patrol Borough Manhattan North?

13 A. Yes, we got SNEU training, we got basic training  
14 dealing with firearms, how to deal with a firearm, certain ways  
15 they're displayed, in the jacket pockets, in bags, something  
16 like that.

17 Q. Thank you.

18 And now drawing your attention to April, 23, 2022, were  
19 you working that day?

20 A. Yes.

21 Q. And to be clear, you were part of Patrol Borough  
22 Manhattan North at that time still?

23 A. Yes.

24 Q. What were your responsibilities that day?

25 A. Like I said, we were just deployed to the command that

1 we were in. I don't know what purpose there was, typically it  
2 would be shootings, robberies, something along that line.

3 Q. And who were you working with that night?

4 A. P.O. Ahmed and Burgos.

5 Q. Were you in uniform or plainclothes?

6 A. Uniform.

7 Q. And were you in a patrol car?

8 A. Yes, unmarked patrol car.

9 Q. Now, drawing your attention to 11:25 p.m. that night,  
10 do you recall where you were at that time?

11 A. Yes.

12 Q. Where were you?

13 A. On 110th and Lexington.

14 Q. What brought you to the vicinity of 110th and Lexington  
15 Street?

16 A. There was a ShotSpotter in the vicinity of the area.

17 Q. Do you know where the ShotSpotter was?

18 A. I don't know exactly where it was. I believe it was  
19 112th and Lexington, somewhere in the vicinity.

20 Q. And did you know what time the ShotSpotter went off?

21 A. I don't remember.

22 Q. Did you know how many rounds or shots fired there were?

23 A. I don't recall.

24 Q. Did you at that time have any suspect that you were  
25 looking for?

1 A. Not that I recall.

2 Q. And would you frequently respond to ShotSpotter alerts  
3 in your capacity as a police officer?

4 A. Yes, always.

5 MS. KNIZHNIK: Objection, relevance.

6 THE COURT: Overruled.

7 Q. Now, at around 11:25 p.m. that night, where were you?

8 A. I was on 110th and Lexington Avenue.

9 Q. And that's in New York County?

10 A. Yes.

11 Q. Can you briefly describe what you observed around that  
12 time?

13 A. I observed the defendant walking westbound on West  
14 110th Street.

15 Q. By defendant, do you recognize the individual in the  
16 room?

17 A. Yes.

18 Q. And can you point him out with an article of clothing.

19 A. The red hoody right there.

20 MS. LAURIE: For the record, the officer has  
21 identified the defendant.

22 Q. I am sorry, can you just say again what you observed?

23 A. I observed the defendant walking westbound on West  
24 110th Street. I observed he had a fanny pack across his chest  
25 which appeared to be heavy. As he kept walking, he was looking

1 kind of left and right as if he was avoiding somebody or  
2 something along those lines. As he got closer to the corner, it  
3 was a well lit corner --

4 MS. KNIZHNIK: Object to the form regarding my  
5 client's state of mind.

6 THE COURT: Overruled. He is testifying to his  
7 observations.

8 Go ahead.

9 THE WITNESS: When he got to the corner, it was a  
10 well lit corner, I was able to see a L-shaped outline in  
11 the fanny pack. We observed the defendant for a short  
12 period after this. He stayed on the corner.

13 At this point, we go across the street and get  
14 closer to his side of the corner, which we observed a  
15 little closer, and the object was emanating a little bit  
16 brighter as I was closer. I did get out of the vehicle at  
17 this time. I approached him by myself. When I approached  
18 him, the part of the L-shape that was emanating from the  
19 bag was a rectangular shape at the top of the bag, which  
20 was consistent with that of a handle of the firearm.

21 Q. Now, when you first observed the defendant, how far  
22 away were you when you first observed him?

23 A. Right across the street.

24 Q. You were in the vehicle at that time?

25 A. Yes.



1 Q. And how many people was he walking with, if any?

2 A. I believe two others.

3 Q. And how long did you observe him for?

4 A. About a minute or two.

5 Q. And in terms of his bag you mentioned, can you describe  
6 again the shape of the object you saw in the bag?

7 A. L-shaped.

8 Q. And at what point did you approach the defendant, how  
9 long after?

10 A. Probably ten seconds after the second observation was  
11 when we went across the street and watched him again.

12 Q. When you say you crossed the street, what do you mean?

13 A. We were on the opposite side of the street. We pulled  
14 the car closer to the corner that the defendant was on, that's  
15 when I said the object was emanating brighter. It was right  
16 under the lights.

17 Q. Where were the lights from?

18 A. I believe there was bodega on the corner.

19 Q. And as the defendant was on the street corner, what was  
20 he doing?

21 A. He was just standing there.

22 Q. Was he holding the bag?

23 A. No.

24 Q. What happened next?

25 A. At that point, that's when I approached him. As I

1 said, the rectangular object at the top of the bag, was kind of  
2 protruding the most from the bag. I asked the defendant in  
3 substance, do you have anything in the bag. He stated to me he  
4 didn't.

5 As I was talking to him, he wouldn't turn towards me as  
6 if he was trying to conceal something. His body was straight.  
7 He would turn his head to look at me.

8 At this point, I did frisk the outline of the bag where  
9 I felt what I believed to be a handle of the firearm. The  
10 defendant tried to pull back from me and grabbed the bag at the  
11 same time. Officer Ahmed then observed this and he got out of  
12 the RMP and I think defendant released his restraint because  
13 there was another officer there. At that time, that's when I  
14 unzipped the bag and the firearm was right there.

15 Q. Now, when you first approached the defendant, can you  
16 describe again what he did with his body?

17 A. He was kind of standing right stiff and I was on his,  
18 what would be his left side, talking to him, and it was as if he  
19 wouldn't -- he didn't want to turn to me because he was  
20 concealing something.

21 MS. KNIZHNIK: Objection, speculation.

22 THE COURT: Overruled.

23 Q. Did he make eye contact with you?

24 A. I believe he made eye contact, yes.

25 Q. Do you recall what else he had said or what you had

1 said?

2 A. I don't.

3 Q. When he had said there was nothing in the bag, what  
4 did you do?

5 A. I frisked the area that I saw was bulging from the bag.

6 Q. And what do you mean by frisk?

7 A. I grabbed the bag with my hand.

8 Q. What part of the bag did you grab?

9 A. The part that was bulging out.

10 Q. Was that the top or the bottom?

11 A. It was the top of the bag.

12 Q. And what did you feel?

13 A. What I believe to be the handle of the firearm.

14 Q. And you also carry a firearm yourself?

15 A. Yes.

16 Q. How thick or thin was the material of the bag?

17 A. I believe it to be very thin. I don't know the exact  
18 size of it.

19 Q. But it was enough that you could feel an object in the  
20 bag?

21 A. Absolutely.

22 MS. KNIZHNIK: Objection, leading.

23 THE COURT: Overruled.

24 Q. What did you feel as you continued to touch the bag?

25 A. I felt, like I said, what I believed to be the handle

1 of a firearm, that's when the defendant became resistant.

2 Q. Did you touch the bottom of the bag?

3 A. Maybe when the defendant grabbed it with two hands, I  
4 grabbed the bag just to gain control of it. My intention was  
5 just to frisk that one area.

6 Q. What do you mean by he grabbed the bag?

7 A. When I put my hand to frisk the object, he tried to  
8 pull the bag and grab the bag with his hands, as if he didn't  
9 want me to touch it.

10 Q. At what point did you open the bag?

11 A. As soon as Officer Ahmed got on the scene right next to  
12 me.

13 Q. When you opened the bag, what did you see?

14 A. The firearm.

15 Q. Where there other objects inside of the bag?

16 A. Yeah.

17 Q. Do you recall what was in the bag?

18 A. No, I don't.

19 Q. Where was the firearm in relation to those objects?

20 A. It was on top right when you open the bag.

21 Q. And when you initially touched the bag, how did the  
22 object feel?

23 A. It felt like a hard rectangular object.

24 Q. How heavy did it feel?

25 A. I can't tell you the weight, but it felt like a heavy

1 metal object. A rectangular metal object.

2 Q. And did the defendant say anything during this time  
3 that you recall?

4 A. No, not that I remember.

5 Q. Was your frisk limited to just the defendant's bag?

6 A. No.

7 Q. What else did you frisk?

8 A. Oh, I am sorry, the frisk was just his bag, yes.

9 Q. And why did you effectuate a frisk in this situation?

10 A. I am sorry.

11 Q. Why did you effectuate a frisk, why did you frisk the  
12 bag?

13 A. Because of the object emanating from the bag and the  
14 behavior.

15 Q. If the defendant had reached for the bag, how far away  
16 was the bag from his hands?

17 A. I believe he touched the bag when I frisked it. He  
18 grabbed the bag.

19 Q. So it he could have opened it himself?

20 MS. KNIZHNIK: Objection, leading.

21 THE COURT: Sustained.

22 Q. Did anything fall out of the bag when you opened it?

23 A. Not that I recall.

24 Q. After you opened the bag, what happened next?

25 A. He was placed under arrest.

1 Q. Do you recall if he said anything as he was arrested  
2 and transported back to the precinct?

3 A. Yeah, I know he was on the phone with his mom saying  
4 that he got arrested with a gun.

5 Q. How was he on the phone with his mom?

6 A. He had an air pod in that we didn't know he had on his  
7 ear because we just tried to get him and the bag in the car. He  
8 was talking to his mom on the phone. I think he did it through  
9 Siri, somehow he called his mom. Like I said, he was arrested  
10 with the gun.

11 Q. Did you and another officer tell him that he was being  
12 recorded?

13 A. Not that I recall. I believe we would.

14 MS. LAURIE: Your Honor, I have no further  
15 questions.

16 THE COURT: Ms. Knizhnik.

17 MS. KNIZHNIK: Just a moment.

18 (Brief pause.)

19 CROSS EXAMINATION

20 BY MS. KNIZHNIK:

21 Q. Good morning, Officer Boylan.

22 A. Good morning.

23 Q. So on April 23 of 2022, you were at 110th and  
24 Lexington, correct?

25 A. Yes.

1 Q. You mentioned that you were across the street, right?

2 A. Ah-huh.

3 Q. There were several lanes of traffic in between your  
4 initial perspective and my client?

5 A. Yes.

6 Q. Now, you're aware that under the New York Police  
7 Department Patrol Guide policy you are required to keep, I  
8 believe, what is called an activity log; is that right?

9 A. Yes.

10 Q. You are supposed to record all of the activities that  
11 you participate in, right?

12 A. Yes.

13 Q. That includes assignments received and tasks performed?

14 A. Yep.

15 Q. And that also includes information pertinent to an  
16 assignment or task?

17 A. Yes.

18 Q. And you know that it's important to provide a  
19 contemporaneous account of the things that you do?

20 A. Yes.

21 Q. In this case you did not enter any information into  
22 your activity log regarding this stop and frisk, correct?

23 A. I am not sure. I am not aware. I don't know.

24 Q. So you don't remember whether you did or did not have a  
25 activity log?

1 A. I don't have my activity log on me, so I am not sure.

2 MS. KNIZHNIK: Permission to refresh the witness'  
3 recollection.

4 I have a copy of the activity log report. I am  
5 showing a copy to counsel and handing it to the witness.

6 THE WITNESS: Okay.

7 Q. Does that refresh your recollection, Officer Boylan?

8 A. Yes. So clearly I did not update the activity log.

9 Q. I am sorry.

10 A. I must not have updated the activity log.

11 Q. You did not complete any activity log for the entire  
12 tour of April 23rd into April 24th of 2022, according to this,  
13 correct?

14 A. Correct.

15 Q. And that's actually not the first time that you failed  
16 to complete an activity log in the course of being a police  
17 officer, correct?

18 A. I mean, I am not sure.

19 Q. Well, you participated in an arrest in May of 2017,  
20 correct, May 14th of 2016, do you recall participating in an  
21 arrest in and around Tenth Avenue of the 34th Precinct?

22 A. I am not sure I was involved in it. If you are saying  
23 it, yeah.

24 Q. I am sorry, what was the last part?

25 A. I am sure I am involved. If your are saying it, I



1 don't remember the exact date, I was involved in many arrests.

2 Q. That incident was actually reported to the Civilian  
3 Complaint Review Board, the CCRB, correct?

4 A. Like I said, I am not exactly sure what incident you  
5 are talking about. I am involved in many arrests. To go back  
6 five years, it's really pretty tough.

7 Q. The CCRB investigated that incident and interviewed you  
8 as part of that investigation?

9 A. I am not sure which arrest you are talking about.

10 Q. Have you been interviewed many times by the CCRB for  
11 arrests you've participated in?

12 A. I have been to the CCRB a couple of times for arrests.  
13 For arrests, maybe once or twice.

14 Q. In that case you were accused of saying some  
15 inappropriate words to some female civilian; do you recall that?

16 MS. LAURIE: Objection.

17 THE COURT: Come up.

18 (Whereupon, there was an off the record discussion  
19 held at the bench between the court and counsel.)

20 Q. The CCRB found that the allegation that you used  
21 inappropriate words toward a civilian, that was a substantiated  
22 allegation, correct?

23 A. Yes, they usually do.

24 Q. They also substantiated the allegation that you did not  
25 complete a memo book entry pertaining to that arrest, correct?

1           A.    Like I said, I don't have the exact arrest that you are  
2 talking about, but I have been substantiated for that, yes.

3           Q.    You also participated in an arrest that was brought to  
4 the attention of the CCRB from October 22, 2017, correct?

5           A.    Which arrest was that?

6           Q.    In that incident, you stopped and frisked a number of  
7 individuals that were exiting a party?

8           A.    Okay. Which arrest was this?

9           Q.    From October 22, 2017, at around West 207th Street.

10          A.    Okay.

11          Q.    Is that correct?

12          A.    I remember going to CCRB for this, yes.

13          Q.    And the CCRB found that the allegation that you did not  
14 have reasonable suspicion to stop and frisk those individuals  
15 was substantiated, correct?

16          A.    Yes.

17          Q.    Also the allegation that you did not make a memo book  
18 entry regarding that arrest?

19          A.    Yes.

20          Q.    An incident was also substantiated, correct?

21          A.    Yes.

22                   MS. KNIZHNIK: Your Honor, at this point I am  
23 going to ask opposing counsel to play again Officer  
24 Boylan's body camera footage.

25                   THE COURT: I don't think that is yet in evidence.

1 Is it?

2 MS. KNIZHNIK: It's not. I apologize.

3 So permission to use the District Attorney's copy.

4 THE COURT: Certainly you can do that.

5 Q. Officer Boylan, you had a body camera on on April 23,  
6 2022?

7 A. Yes.

8 Q. And you had a chance to review your body camera footage  
9 from that evening as part of your preparation for your testimony  
10 here today?

11 A. Yes.

12 Q. And that body camera footage, which opposing counsel,  
13 the prosecution is playing right now, about to play, is a fair  
14 and accurate copy of the events as they occurred on April 23,  
15 2022, correct?

16 A. Sure.

17 MS. KNIZHNIK: Permission to enter the copy of  
18 Officer Boylan's body camera footage into evidence as  
19 Defense C.

20 THE COURT: Any objection?

21 MS. LAURIE: No objection.

22 THE COURT: Defendant's C is received in evidence.  
23 (Whereupon, Defendant's Exhibit C was received  
24 into evidence.)

25 MS. KNIZHNIK: Permission to play a portion of

1           that footage.

2           THE COURT: Yes.

3           MS. KNIZHNIK: I am now playing.

4           (Whereupon, Defendant's C, the video recording was  
5           played in open court.)

6           MS. KHIZHNIK: I apologize. For the record, the  
7           video recording is now paused at one minute and two  
8           seconds.

9           Q. Officer Boylan, the beeping sound that we just heard at  
10          the beginning of the audio on the video, that indicates one  
11          minute of this video, that indicates that at this point at the  
12          one minute mark of the video is when you actually turned on your  
13          body camera recording, correct?

14          A. Yes.

15          Q. And at that point you were already putting [REDACTED]  
16          into handcuffs, right?

17          A. It happened very quick.

18          Q. The entire interaction, the stop, the frisk, the  
19          opening the bag, that had already occurred when this recording  
20          starts?

21          A. Yep.

22          Q. And you're aware under New York Police Department  
23          protocols you are required to begin recording your body camera  
24          footage prior to any interaction in which you might be  
25          suspecting an individual of criminal activity?

1           A.    Right, but there is also an exception when you're  
2 worried for your safety. That was the last thing on my mind at  
3 the time when I suspected somebody of having a gun.

4           Q.    This isn't the only time that you have failed to  
5 activate your body camera footage during the course of an  
6 arrest, correct?

7           A.    You tell me.

8           Q.    On February 8th of 2019, you participated in an arrest  
9 outside of the 191st Street subway station, correct?

10          A.    Okay.

11          Q.    Do you recall that incident?

12          A.    What was the date?

13          Q.    February 8, 2019.

14          A.    Like I said earlier, it's so hard for me to tell you  
15 the exact arrest that I made on that date, I have been involved  
16 in so many arrests.

17          Q.    That arrest was also brought to the attention of the  
18 Civilian Complaint Review Board, correct?

19          A.    I am not sure what arrest you are talking about. If  
20 you are telling me that, then yes.

21          Q.    In the course of that arrest, you used force against a  
22 person who was being arrested, correct?

23          A.    I don't know what case you are talking about. If you  
24 want to specify, I can probably speak better on this.

25          Q.    There was someone being arrested by other officers and

1 you arrived as backup outside of the 191st Street subway station  
2 on February 8th of 2019?

3 A. Okay. I don't recall that.

4 Q. The person who is being arrested was on their stomach,  
5 correct?

6 A. I don't recall this, as I just said.

7 Q. You hit the person while they were being arrested and  
8 were already on their stomach being handcuffed; do you recall  
9 that?

10 A. I do not recall that, as I just said.

11 Q. And the CCRB found that the allegation that you used  
12 unjustified force in that encounter was substantiated, correct?

13 A. Okay.

14 Q. And also you failed to record that interaction with  
15 your body camera footage, correct?

16 A. Like I said, I am not sure of the incident you are  
17 talking about. If you're telling me that, then yes.

18 MS. KNIZHNIK: No further questions.

19 THE COURT: If can you repeat the last couple of  
20 questions.

21 (Whereupon, the Official Court Reporter read back  
22 the referred to testimony.)

23 THE COURT: Any redirect?

24 MS. LAURIE: No redirect.

25 THE COURT: Thank you, officer.

1 You may step down.

2 (Witness excused.)

3 \*\*\*

4 THE COURT: People, do you wish to call any  
5 additional witnesses?

6 MS. LAURIE: No, your Honor, the People rest.

7 THE COURT: Ms. Khizhnik, do you wish do call any  
8 witnesses for the hearing?

9 MS. KNIZHNIK: Just one moment, your Honor.

10 (Brief pause.)

11 MS. KNIZHNIK: No, your Honor.

12 THE COURT: You rest?

13 MS. KNIZHNIK: Yes.

14 THE COURT: I will hear you, Ms. Knizhnik.

15 MS. KNIZHNIK: Can I have five minutes to confer  
16 with counsel?

17 THE COURT: Yes.

18 MS. KNIZHNIK: Thank you.

19 (Brief recess.)

20 THE COURT: I will hear you.

21 MS. KNIZHNIK: Your Honor, we are moving to  
22 suppress all tangible objects an intangible evidence  
23 recovered from [REDACTED] following the seizure in this  
24 case, including the firearm that was recovered, all post  
25 seizure statements made by [REDACTED] any post seizure

1 observations made of [REDACTED], as well as any DNA that  
2 was recovered from [REDACTED], as a result of this arrest  
3 as fruit of unlawful police action; namely, a violation of  
4 Mr. Spencer's rights under the Fourth and Fourteenth  
5 Amendment to the U.S. Constitution and Article 112 of the  
6 New York Constitution.

7 And we're also moving to suppress any statements  
8 made by [REDACTED] as they were obtained in violation of  
9 his Fifth and Fourteenth Amendment rights under the U.S.  
10 Constitution, and Article 1, Section 6 of the New York  
11 State Constitution, that they were involuntary under the  
12 meaning of CPL 60.45.

13 Your Honor, the prosecution has failed to meet its  
14 burden of going forward to show that the police action in  
15 this case was lawful. They have failed to put forward  
16 factual and credible evidence demonstrating that the  
17 seizure, search and arrest in this case were legal. The  
18 testimony that was provided was conclusory, not credible,  
19 and ultimately did not establish the level of suspicion  
20 required for each step of the police intrusion that ensued.

21 However, even if your Honor finds that the  
22 prosecution met its burden of production, the defense has  
23 shown by a preponderance of the evidence that the police  
24 actions in this case were unlawful. Under the four tier  
25 framework for police street encounters established by the



1 Court of Appeals in *People v. DeBour*, a police initiated  
2 encounter must be justified at its inception.

3 THE COURT: I am aware of that. Make your factual  
4 argument.

5 MS. KNIZHNIK: Of course.

6 So let's go through the timeline of what this  
7 encounter actually looked like. According to Officer  
8 Ahmed, he observed a heavy weighed down fanny pack with a  
9 rectangular object. Officer Boylan described that as an  
10 L-shaped object.

11 THE COURT: Let's focus on Officer Ahmed for a  
12 moment. What level of suspicion? He said a little bit  
13 more than that. He also said that he saw the defendant.

14 MS. KNIZHNIK: Correct.

15 THE COURT: What level of suspicion did the  
16 combination of looking over his shoulder in the way  
17 described and the observation of what we will assume for a  
18 moment is a rectangular object by the police?

19 MS. KNIZHNIK: Well, your Honor, I would submit  
20 to you that the actions, first of all, just talking about  
21 the nervousness and the question of whether my client was  
22 looking around, we have the surveillance footage of at  
23 least the front of the deli. You can look at the footage  
24 yourself. Any actions by my client were equivocal at best.  
25 These are innocuous behavior. It is clearly susceptible to

1 innocent explanation and I would argue not provide even  
2 enough just suspicion to justify even a DeBour Level 1 for  
3 information.

4           Going back to the question of this discussion of a  
5 ShotSpotter notification, and I believe it's a somewhat red  
6 herring, your Honor. There is a ShotSpotter notification  
7 from two hours before from several blocks away on a busy  
8 Saturday night in Manhattan. There was no description that  
9 was provided, so therefore, of course, [REDACTED] did not  
10 match any description and was not actually suspected of  
11 being related to that ShotSpotter notification.

12           I would direct your Honor's attention to two  
13 different cases involving ShotSpotter.

14           People versus Ravenell, 175 A.D. 3d 1437.

15           And I have copies of all of the cases I am going  
16 to be citing for your Honor's convenience.

17           That's a Second Department case from 2019. That  
18 case involved a stop in which two males did match the  
19 description connected to a ShotSpotter notification and  
20 were stopped close by to the actual location and actively  
21 fled in that case. The Second Department determined that  
22 the police still lacked Level 3 reasonable suspicion  
23 required to pursue the defendants in that case. Again,  
24 that case involved closer in time and an actual description  
25 that the defendants matched an actual flight, where there

1 was no actual flight in this case.

2 I would also direct your Honor to People v. Bilal,  
3 170 A.D. 3d 83. That's a First Department case from 2019.  
4 And that also involved police pursuit of a defendant  
5 requiring Level 3 suspicion, reasonable suspicion, and the  
6 First Department found that that was not permissible  
7 despite there also being a ShotSpotter notification close  
8 in time and space, and that case also involved the  
9 defendant that matched the description and the defendant  
10 that fled actually fled upon police pursuit.

11 So, again, here we have much less than that.  
12 There was no flight. No description. So I would submit  
13 to your Honor the ShotSpotter notification, the ShotSpotter  
14 should not factor into the DeBour analysis at all.

15 Going to, I will address the issue of the outline  
16 last, if that's all right with your Honor.

17 I expect or I believe that the prosecution may  
18 argue around some of the other things that happened in the  
19 interaction between Officer Boylan and my client. That,  
20 of course, turns when the defense actually entered the body  
21 camera footage into evidence. That is the most objective  
22 evidence that we have of what actually occurred.

23 I believe the prosecution might argue regarding  
24 the question and answer that occurred, the question being,  
25 "What is in the fanny pack," and the answer being

"nothing." In this case, your Honor, I would argue that that question, "What is in the bag," is a Level 2 DeBour common law inquiry. Mr. Spencer's actions were easily susceptible to an innocent explanation and the approach and questioning of him immediately, "What's in the fanny pack," was again a Level 2 DeBour intrusion. It did not have a founded suspicion of criminal activity being afoot. That question, "What's in the fanny pack," was not merely a request for information, but it was undoubtedly the kind of request that would make someone reasonably believe that he or she is suspected of some wrongdoing.

The Court of Appeals case, *People v. Holman* describes the distinction between a request for information under the DeBour Level 1 and a Level 2 common law inquiry and also describes that distinction in relation to a previous Court of Appeals case, *People v. Moore* from 1979. And the Court of Appeals in *Holman* clarified, because the court in *Moore* found that the question, "What's in the bag," in that case was only merely a request for information, but *Moore* was a case in which the defendant in that case was seen carrying a pillow case with a television set. The *Holman* court clarified that if the individual is carrying something that would appear to a trained officer to be unusual, the police officer can ask about that object. Here, fanny packs are simply not unusual items,

1 such that asking about the contents of them would be  
2 warranted as a mere request for information. Rather,  
3 anyone being asked by a uniformed police officer about the  
4 contents of this closed fanny pack might reasonably believe  
5 they are suspected of some wrongdoing.

6 In People v. Butler --

7 THE COURT: Does that change, and how does that  
8 change if the police observe an L-shaped object consistent  
9 with a firearm?

10 MS. KNIZHNIK: Well, as I mentioned -- okay.  
11 I can go to the outline of the gun. This is the crux of  
12 the issue ultimately, whether there was in fact an outline  
13 of a gun that was visible by the officers in this case.  
14 Now, there are obviously -- to answer your direct question,  
15 there are cases obviously that involve the outline of a gun  
16 and courts have found that that does provide reasonable  
17 suspicion. But the question here is whether that assertion  
18 by the officers in this case is objectively credible. And  
19 it's simply not. I would direct your attention --

20 THE COURT: I am sorry to interrupt you. Can I  
21 ask you, if I were to find Officer Ahmed to be credible,  
22 putting aside Officer Boylan for a moment, what is your  
23 position as to whether testimony that there was a  
24 rectangular object visible through a bag as opposed to an  
25 L-shaped object through a bag, where would that lead?

1 MS. KNIZHNIK: Well, your Honor, I would argue  
2 that the rectangular object is simply equivocal. It could  
3 be anything. In fact, Officer Ahmed admitted as such when  
4 being directed by the District Attorney's office. Officer  
5 Ahmed, the District Attorney's office asked directly, "Did  
6 you know that it was a firearm and not anything else,"  
7 and Officer Ahmed said, "I don't know." And that's exactly  
8 the point here. The credible officer had to admit that  
9 there wasn't an outline of a gun, there was a rectangular  
10 object.

11 Your Honor can look at the body camera footage  
12 yourself. You can pause and see the shape of the fanny  
13 pack. It's clear there is something in the fanny pack. In  
14 fact, we know there were lots of things in the fanny pack.  
15 Officer Ahmed admitted that there were a whole litany of  
16 items in addition to the firearm that were found inside of  
17 the fanny pack.

18 THE COURT: Well, that being so, doesn't your  
19 client's patently immediately recognizable as untruthful  
20 answer to the question, "What's in the fanny pack," elevate  
21 the suspicion?

22 MS. KNIZHNIK: So, your Honor, going back to the  
23 question of "What is in the bag," that would be a Level 2  
24 intrusion under a number of cases, the question and the  
25 answer of "nothing."

1                   So I would direct your Honor to People v.  
2                   Corneilus, that's 113 A.D. 2d 666. That's a 1986 First  
3                   Department case. And in that case it was the same  
4                   situation, where defendant was asked, what was in their  
5                   bag, the response of nothing, meaning a false response,  
6                   even that saying of nothing was deemed to be equivalent to  
7                   his right not to respond at all and did not raise the level  
8                   of objective suspicion.

9                   The same is true in People v. Holmes, which  
10                  emphasizes -- that's 81 N.Y. 2nd 1056, a Court of Appeals  
11                  case from 1993, which emphasizes an individual has a right  
12                  to be left alone and refuse to respond to police inquiry,  
13                  answering nothing.

14                 THE COURT: Aren't there trespass cases where an  
15                 affirmative false answer as to whether you know someone is  
16                 in the building or whether you live in the building is also  
17                 effectively elevating a level of suspicion and is not  
18                 equated with the right to be left alone and having said  
19                 nothing at all? Isn't there a difference between a  
20                 nonanswer and false answer?

21                 MS. KNIZHNIK: There were trespass cases involving  
22                 that situation. But the point is, that you have to look at  
23                 the totality of the circumstances. And the circumstance in  
24                 which someone is in a building where there are signs  
25                 posted, all of the factors that go into whether someone is

1 guilty of trespass is a different situation than the  
2 privacy that is afforded to someone's personal items, to  
3 items that are on their person. That gets into the issue  
4 of Gokey in this case.

5 THE COURT: Doesn't that really go to what you  
6 have argued, whether the police had the right to ask the  
7 question in the first place? If they had the right to ask  
8 the question, doesn't his false answer from that point  
9 forward elevate the level of suspicion?

10 MS. KNIZHNIK: I submit that it does not. The  
11 answer nothing is not the kind of false answer, as again I  
12 would direct your Honor's attention to the Cornelius case.  
13 It's directly on point. That case, again, this is about  
14 there may be situations in which giving a false answer does  
15 raise the level of suspicion, but it doesn't automatically  
16 here because of the extreme lack of suspicion, lack of  
17 objective credible reason to believe that my client was  
18 involved in any sort of criminality. The question, "What's  
19 in your bag," the answer "nothing," is not the kind of  
20 question and false answer that would raise the level of  
21 suspicion.

22 Rather, I submit, that that answer and  
23 particularly under the totality of the circumstances -- in  
24 this case, again, you can watch the body camera footage  
25 that we entered into evidence. The entire period of time



1 from when Officer Boylan exited the vehicle to when the  
2 frisk was completed. So when he grabbed the bag, when he  
3 grabbed the fanny pack, which is the frisk, is 15 seconds,  
4 your Honor. So in that short amount of time the simple  
5 question of "What's in the bag," "nothing," that's almost  
6 an intentional answer. That's not something, or, I don't  
7 know how I would respond if there was no time to reflect.  
8 This is not the situation where my client was actively  
9 trying to. Ultimately, it just doesn't matter, your Honor.  
10 That short brief response of "nothing" in response to  
11 "What's in the bag," which, again, I would argue, did not  
12 have the requisite Level 2 suspicion that would have been  
13 required for that question, did not raise every level of  
14 suspicion such that a frisk, which is essentially a Level  
15 3, so it's not just reasonable suspicion, but specifically  
16 reasonable suspicion that client was armed, an  
17 individualized suspicion thereof.

18 THE COURT: May I see Cornelius?

19 MS. KNIZHNIK: Yes, one moment.

20 THE COURT: Keep going.

21 MS. KNIZHNIK: Yes, your Honor.

22 So, additionally, there may be an issue, there was  
23 some description of my client stepping away. I believe  
24 Officer Boylan described it as blading the body. Again, I  
25 encourage your Honor to watch the body camera footage as

1 many times as you need to, which indicates that there was  
2 no such blading of the body. [REDACTED] is standing  
3 there. Again, the entire interaction, the interaction  
4 takes 15 seconds. It's from when he steps out, it's less  
5 than 15 seconds, perhaps 12 seconds.

6 THE COURT: Wouldn't the testimony be that the  
7 stepping away or the grabbing at the bag, was all after the  
8 commencement of the frisk to begin with, right?

9 MS. KNIZHNIK: Exactly.

10 THE COURT: So ultimately if the frisk is lawful,  
11 that's irrelevant. If the frisk is relevant, that is  
12 irrelevant.

13 MS. KNIZHNIK: I want to clarify that I believe  
14 there was some testimony that the step away, the blading of  
15 the body, preceded the frisk by Officer Boylan. So I think  
16 the body camera footage shows that it did not, and there  
17 was no such stepping away. That when the frisk occurred,  
18 when the reaching and grabbing the bag occurred, that's  
19 when my client did one single step back and reached down as  
20 well. So there is no flight.

21 With respect again -- well, just also on the issue  
22 of the body cam footage, both officers admitted that they  
23 did not turn on their body camera footage until essentially  
24 after the entire frisk occurred in this case. They know  
25 that that's general department policy. And I would submit,

1 your Honor, that they intended to only capture the  
2 interaction after the arrest or the seizure took place.  
3 It's only by happenstance that the body camera, the  
4 cameras, once you press record, they then automatically  
5 record the one minute prior and preserve that one minute  
6 prior.

7 THE COURT: You know that because every officer  
8 testifies to that when asked in every hearing. So you say  
9 happenstance. You don't believe the officers know that  
10 full well?

11 MS. KNIZHNIK: Well, the audio is a significant  
12 portion here as well. Given especially the fact that my  
13 client's statements are being used or whatever their  
14 interaction, question and answer, may in fact be used to  
15 argue to elevate the level of suspicion, we don't actually  
16 know what that encounter sounded like because there was  
17 no audio from that portion because they did not press  
18 record until after it already occurred. We have the video  
19 because of the way that the body camera functioned, but we  
20 don't have the audio, and that's significant.

21 And, again, the crux of the issue here is about  
22 whether or not whatever was seen in the bag or from the  
23 outside was in fact what they say it was.

24 And, your Honor, I would again encourage you to  
25 watch the body camera footage, to look at Defense Exhibits

1 A, B and C, and the fanny pack itself. This is not a fanny  
2 pack -- there are multiple pockets here. There were items  
3 in the front pocket as well as the back pocket. You see in  
4 Defense Exhibit B, there are in fact items directly in  
5 front of the firearm that would have made whatever outline  
6 was visible, not the outline that they described, where  
7 they could see so directly the handle of the gun and  
8 everything else about it. This is on the street.

9 First of all, the other piece of this is, your  
10 Honor, both officers testified that they could notice this  
11 outline, this alleged outline or whatever rectangular  
12 object, L-shaped object, this was all noticeable. That  
13 they could objectively see this from across both streets.  
14 So across Lexington Avenue, which is four lanes wide as  
15 well as across 110th Street. So they were an entire corner  
16 away. I would submit that is about 40 to 50 feet away.  
17 That that is when they saw -- both officers happen to be  
18 able to see with some sort of super human vision, that is  
19 also X-ray vision, this alleged outline. Which, again, is  
20 simply not credible.

21 I want to direct your Honor's attention to another  
22 case, the matter of Pierre N., that's 224 A.D. 2d 243,  
23 which is a First Department case from 1996, in which the  
24 arresting officer testified at the suppression hearing that  
25 he observed what appeared to be the outline of a medium

1 size handgun in respondent's left rear pocket. The First  
2 Department refused to credit that department's finding,  
3 saying that the testimony was belied by the other more  
4 credible evidence at the hearing and therefore all  
5 appearances have been patently tailored to nullify  
6 constitutional objections. That is exactly the case here,  
7 your Honor.

8 Many of the outline of a gun cases preceded body  
9 camera footage, preceded the level of quality of  
10 surveillance video that we have today. This is the exact  
11 reason why body cameras exist, because testimony can be  
12 either fabricated or just incorrect. People's memory can  
13 be incorrect.

14 And I would also direct your Honor to compare the  
15 Pierre N. case to another case, People v. McClendon, 92  
16 A.D. 3d 959, a Second Department case from 2012. There the  
17 security video corroborated the officer's testimony as to  
18 the crucial point of the outline of the gun. That  
19 corroboration does not exist here. This is a situation  
20 like Pierre N. where the objective credible evidence of the  
21 body camera footage, the video, this still from the video,  
22 also just the physical fanny pack itself, indicates that an  
23 outline of a gun or even an object that could reasonably be  
24 perceived as a gun was not visible from even directly close  
25 up to the bag, let alone from all the way across both

1 Lexington Avenue and 110th Street. Indeed, at the moment,  
2 if you watch Officer Boylan's body camera footage, you will  
3 notice that it takes even 15 more seconds of him groping  
4 the bag and opening it before he arrests [REDACTED] He  
5 is investigating what is in the bag. He didn't know that  
6 there was a gun in that bag.

7 As Officer Ahmed testified, you don't know that it  
8 was a gun in that bag. It was something in the bag.  
9 That's it.

10 And, indeed, your Honor, there is also the issue  
11 that the fact that the bag itself was a zipped bag, that's  
12 a closed container, and so therefore it's afforded even  
13 more protection under the New York State constitution  
14 pursuant to People v. Jimenez and and People v. Gokey,  
15 which, of course, your Honor is familiar with.

16 At every stage of this case there was simply not  
17 the level of suspicion that was required to engage in a  
18 level of intrusion that occurred.

19 I also just want to direct your Honor's attention  
20 to three unpublished cases which I do have copies for your  
21 Honor as well as opposing counsel.

22 I have just handed copies over to your Honor as  
23 well as to opposing counsel.

24 So in People v. Rutledge, which is a Supreme  
25 Court, Criminal Supreme Court case out of Queens, Judge

1 Stephen Knopf found there was no exigency exception to the  
2 Gokey doctrine such that the search of plastic bags as  
3 search incident to lawful arrest was not lawful and  
4 evidence was suppressed in that case despite there being  
5 an identifying 911 caller who described the firearm, the  
6 defendant matched the description given by the caller in  
7 that case and officers observed a bulge in the defendant's  
8 pants pocket and that when the officer removed two plastic  
9 bags from the defendant's hands and placed them on a nearby  
10 brick wall, the officer heard a clanking sound and felt the  
11 outside of one of the bags, felt what appeared to be the  
12 handle of a trigger guard of a handgun. That is a case in  
13 which, again, there was lot more than we have in this case.  
14 There was a 911 caller, a description, and yet that was a  
15 closed container which in a lot of ways is a less closed  
16 container, a plastic bag that doesn't have a zipper the way  
17 the fanny back in this case does.

18 As your Honor knows, there is no plain touch  
19 exception to the requirement for closed containers under  
20 Gokey and Jimenez.

21 So that is the unpublished Rutledge case that I  
22 submitted.

23 People v. Shayquon Brown, this is a Brooklyn  
24 Supreme Court case, Justice William Harrington, in which  
25 the frisk was not justified despite intelligence that an

1 event where the defendant was located may have had gang  
2 members who possessed firearms present. And there was  
3 observation of defendant in that case placing his hands in  
4 front of his waistband area and sidestepping behind another  
5 individual, and when the officer and defendant made eye  
6 contact in the course of 12to 15 minutes, the defendant had  
7 a darting gaze which the officer characterized as very  
8 suspicious. Later officers observed the bulge in the front  
9 waistband area, which didn't seem like a phone, and  
10 protruded from the defendant's sweatshirt. The defendant  
11 abruptly walked toward the other side of the street and  
12 away from uniformed police officers, which was described by  
13 officers as a pre-flight indicator, meaning that the  
14 defendant was possibly about to flee. Again, evidence was  
15 suppressed in that case despite what I would argue as more  
16 evidence, more suspicion than was present in this case. We  
17 have a bulge that was protruding, suspicious activity  
18 observations over the course of 15 minutes. That gun was  
19 also suppressed.

20 Finally, People v. Cooper, a Queens Supreme Court  
21 case, in which Judge Frances Wang found that a stop was not  
22 justified where officers observed the defendant walking at  
23 a high rate of speed in a fairly lit, high crime area,  
24 glanced back at the officer numerous times, and had a fanny  
25 pack with a heavy L-shaped object inside of it. That he



1 shifted from his back to his front. So very similar fact  
 2 pattern in terms of the fanny pack, the L-shaped object.  
 3 Same even phrase, L-shaped object. And, again, more, I  
 4 would say evidence of criminality, walking at a high rate  
 5 of speed, glancing numerous times and shifting. And the  
 6 court found that those observations were not indicative of  
 7 criminality. At most, were common law inquiry to determine  
 8 whether criminal activity was afoot. And the defendant in  
 9 that case choose to flee, and the fact that that happened,  
 10 the flight that happened in that case, without additional  
 11 testimony that the officer was in fear for his safety, the  
 12 court in that case found the officer was not permitted to  
 13 pursue the defendant and that there was no evidence  
 14 offered that would allow the court to reasonably infer that  
 15 the heavy L-shaped object was a firearm as opposed to any  
 16 noncriminal innocuous item.

17 Again, your Honor, I think that case is correctly  
 18 on point, despite the officer's attempts in this case to  
 19 retroactively justify their actions based on the results of  
 20 the search and seizure that took place, the officers here  
 21 as in Cornelius acted upon a hunch or a gut reaction which  
 22 is simply not enough.

23 As the court stated in Cornelius, just a search  
 24 illegal at its inception cannot be validated by what it  
 25 produces. A conclusion that the search in this case was

1 lawful would effectively flip that premise.

2 And just to clarify, your Honor, the intrusion  
3 here, the frisk of the bag, was a search. The holding, the  
4 touching of the bag indicated was in fact a full blown  
5 search that would have required probable cause and that did  
6 not exist.

7 The conclusion that the search in this case was  
8 lawful would effectively flip the premise that the results  
9 of a search invalidate the search despite it being unlawful  
10 at its inception. It would allow many other cases in which  
11 that did not make it to this court where unlawful stops and  
12 frisks did not produce anything to also be permitted.

13 And, of course, suppression is essentially the  
14 only remedy or one of the only remedies that exist for an  
15 unlawful search and seizure. It just so happens this one  
16 did produce a gun, but there is no indication objectively  
17 and reasonably that a closed container even from close-up  
18 let alone from 15 away was in fact the outline of a  
19 firearm. And, therefore, your Honor, I would ask that your  
20 Honor suppresses all fruits of the search in this case as  
21 unlawful.

22 THE COURT: Thank you very much.

23 Before I adjourn, can I ask one question?

24 I am looking at Cornelius, which you handed me,  
25 and I certainly see that the court did not ultimately find

1 reasonable suspicion as a result of or despite the fact  
2 that the defendant falsely answered "nothing" in response  
3 to an inquiry. But I am trying to find the portion that  
4 you referred to where you say the court in that case held  
5 that falsely answering nothing equates with the right to be  
6 left alone and not to have to answer questions.

7 MS. KNIZHNIK: One moment.

8 THE COURT: Tell me what page that is on.

9 MS. KNIZHNIK: I didn't cite it, but I will find  
10 it. It's on -- well, it's the second page of the printout  
11 and I believe the pin site is 669, depending on the  
12 reporter. Here is the paragraph beginning with "no  
13 inkling." Accordingly, the defendant's "nothing" was  
14 equivalent of his right not to respond at all.

15 THE COURT: Thank you.

16 Ms. Laurie.

17 MS. LAURIE: Thank you, your Honor.

18 Your Honor, I ask that you find Police Officer and  
19 Police Officer Boylan credible. Officer Ahmed and Officer  
20 Boylan had probable cause to not only stop the defendant  
21 but the statements that the defendant made were voluntary  
22 and should not be suppressed. Officer Ahmed testified that  
23 he has been an officer for nearly five years.

24 THE COURT: Excuse me.

25 Go ahead.

1 MS. LAURIE: He received specialized training in  
2 making arrests for firearm possession and he has made  
3 approximately 10 arrests for firearms in his career.

4 Officer Boylan similarly testified that he has  
5 been an officer for nearly seven years, has also received  
6 specialized training for making firearm possession arrests.  
7 He is now on the Detective Squad. And he has assisted in  
8 well over 300 arrests.

9 Both officers clearly testified truthfully and  
10 neither exaggerated the events that occurred on April 23,  
11 2022, and I think further proof of that is when pressed on  
12 in details of his past arrests or on the ShotSpotter,  
13 Officer Boylan answered honestly and said he did not know  
14 rather than make up an answer or try to respond.

15 With respect to the Mapp and Dunaway portion of  
16 this hearing, your Honor, as you know, the People have the  
17 burden to show that the evidence was legally obtained and  
18 there was probable cause to arrest the defendant. And we  
19 have done both. The circumstances of this incident rise to  
20 a Level 2 interaction. Once founded suspicion of criminal  
21 activity, it quickly rose to a Level 3 and Level 4, upon  
22 Officer Boylan and Officer Ahmed's realization that the  
23 defendant's bag displayed what Officer Boylan described as  
24 an L-shaped hard heavy object, which was Officer Ahmed's  
25 description of it, as a hard rectangular object. They both

1 testified that the fanny pack looked heavy. That it was  
2 weighed down. And ultimately that necessitated a frisk for  
3 not only their own safety but that of the public.

4 Just to briefly outline their observations, they  
5 were investigating a ShotSpotter. That ShotSpotter had  
6 occurred two blocks away from where the defendant was  
7 stopped. It had occurred two hours prior. But they were  
8 doing their duties as public safety patrol officers, which  
9 means they monitored and patrolled the areas within the  
10 confines of where the shooting occurred. That being the  
11 23rd Precinct. They testified specifically they had  
12 specialized training and experience with respect to high  
13 crime areas and ShotSpotter notifications about what  
14 happened on this night. They were looking for someone who  
15 had used a firearm. Officer Ahmed said that based on what  
16 he recalls, there had been no suspect. No arrest had been  
17 made, and so they were looking for a shooting suspect, one  
18 who --

19 THE COURT: What do you define as the vicinity?  
20 You said within the confines of the 23rd Precinct. Once  
21 there is a shots fired notification in the 23rd Precinct,  
22 does that mean that anyone walking on the street in the  
23 entire 23rd Precinct is subject to some additional police  
24 intrusion that they would not have been subject to on the  
25 same facts had there not been a ShotSpotter?

1 MS. LAURIE: I don't think so at all. I think  
2 because there wasn't a suspicion, they were more discerning  
3 in what they were looking for. They were looking for a  
4 firearm. They weren't looking out for any particular  
5 suspect, they were just on patrol in this area which had a  
6 notification that there was shots fired.

7 THE COURT: Does that mean that in your view the  
8 observations that they made, including the outline of  
9 either a rectangular object or an L-shaped object gave them  
10 the right to take the actions that they did?

11 Would, if they had made those same observations,  
12 are you saying they would not have had the right to take  
13 the actions that they did on those observations if there  
14 hadn't also earlier been a ShotSpotter report blocks away?

15 MS. LAURIE: I think, your Honor, that the  
16 ShotSpotter notification gives context for what they were  
17 looking for. I think their independent analysis and  
18 observation of the defendant holds true. I am going to get  
19 to what they saw. I know you heard what they observed, but  
20 I think that it is a relevant distinction. However, it  
21 doesn't negate the fact that what they saw would have been  
22 maybe what they saw had they been in this area for a reason  
23 though.

24 THE COURT: Anything else?

25 MS. LAURIE: No.

1 Can I continue?

2 THE COURT: Of course. That's why we're here.

3 MS. LAURIE: Yes.

4 Your Honor, also just to add to that point, it's  
5 their specific duty, Patrol Borough Manhattan North, to,  
6 you know, make arrests not only in high crime areas but  
7 specifically for shootings and other more violent crimes,  
8 like robberies. So they did this on a daily basis. To  
9 briefly outline their observations though, they did both  
10 testify that they saw the defendant walking on the street.  
11 They observed him for about a minute. At some point the  
12 defendant stopped on the southeast corner of 110th and  
13 Lexington. And while they were observing the defendant  
14 walking, he was constantly looking over his shoulder and  
15 averting his eyes. He wasn't engaging with the people he  
16 was with. And it is important to note that Officer Ahmed  
17 said that his fanny pack stood out because in his  
18 experience this type of bag is popular for securing  
19 firearms, or he made prior arrests where firearms are  
20 secured in fanny packs. I don't think it's insignificant  
21 that the fanny back did draw his eye.

22 Furthermore, about the fanny pack, he testified  
23 that it looked heavy. It looked weighed down. It looked  
24 like it was filled with things.

25 Officer Boylan also testified that he observed an

1 L-shaped outline in addition to Officer Ahmed saying he  
2 observed a rectangular hard object that was pointing up. I  
3 think the positioning of the gun itself within the fanny  
4 pack or this object is what they saw is relevant to why  
5 they made an approach up to the defendant in the first  
6 place. Their approach of him in the first place is also  
7 reasonable under this common law right to make an inquiry.  
8 The subsequent seizure is also reasonable based on the fact  
9 Officer Boylan testified he asked the defendant, "What do  
10 you have in your bag?" The defendant said "nothing,"  
11 when it was clear that the defendant's bag was containing  
12 something and that it was full and heavy and weighed down.  
13 They didn't approach the defendant with any weapons drawn.  
14 They didn't approach with their sirens on. They didn't  
15 approach and give an immediate command like stop or put  
16 your hands up. They just approached. Specifically,  
17 Officer Boylan approached independently.

18 In addition to Officer Boylan's testimony, he said  
19 that the defendant's body and his head were turned away  
20 from him. He testified that it was like the defendant  
21 didn't want him to see the bag. I think that these  
22 independent observations as well when Officer Boylan gets  
23 closer to the defendant and he sees the bag more closely,  
24 shining from the light of the deli where the bodega is on  
25 that corner, and he can identify that this L-shaped object



1 is not just a random L-shaped object, but that of a  
2 firearm, it does ratchet up that inquiry to a Level 3 stop  
3 which provides Officer Boylan with the authority to stop  
4 and frisk someone who he reasonably suspects to be armed,  
5 and given that there is danger of physical injury.

6 Just as a point of comparison, the officers really  
7 provided equal judgment to the other passerby's on the  
8 street. I believe this is indicative based on the fact  
9 that neither of them stopped the defendant's friends. They  
10 didn't go up to the friends and frisk them. They didn't  
11 ask them questions. Not that they testified to. That is  
12 more than just a hunch. Why would they stop one person in  
13 the group and not the others? To contrast the interaction  
14 with the defendant versus the other male friends, who is  
15 also wearing a red hooded sweatshirt and who may or may not  
16 have a bag. The officers didn't ask him what he had on him  
17 and if he had any weapons. I think that is really  
18 important to show that and clarify that they did see, they  
19 did observe the defendant and the defendant's fanny pack  
20 and that bolsters their testimony and their objective  
21 observation of the defendant.

22 THE COURT: Done that equally suggest, as the  
23 officer himself essentially testified, and as you just  
24 alluded to, that he thinks everyone with fanny packs has a  
25 gun or are guns are always in fanny packs? He directed his

1 attention to the one that had a fanny pack.

2 MS. LAURIE: I don't think the fanny pack is a  
3 prediction. It's an important indication for officers  
4 specifically trained in looking for firearm possession.  
5 It's not a pretext. They saw the outline. Officer Boylan  
6 saw an L-shaped outline consistent with that of a firearm.  
7 Officer Ahmed saw, he said, the grip of the firearm  
8 protruding into the bag as if the bag was full and the  
9 protruding of the grip was pointy and up.

10 I also, just as a matter of the cases that the  
11 defense has provided, I think there are important  
12 distinctions. They're ultimately not on point. Ravenell  
13 and Bilal, both from the outside appear to concern a Level  
14 3 suspicion in which the defendants had fled. They were  
15 also close in time to a ShotSpotter notification.

16 Here, you know, your Honor, we didn't have a  
17 suspect generated from the ShotSpotter, and this I don't  
18 think leads to Level 3 interaction. I think it should be  
19 evaluated under a Level 2 and ratcheted up to a Level 3.

20 As for the unpublished case, People v. Deshawn  
21 Cooper, the officer's testimony in this case where the  
22 officer testified that he observed a heavy L-slapped  
23 object, that being a firearm, the officer additionally  
24 testified that he didn't have any training or experience in  
25 the identification of firearms. In fact, he'd never been

involved in any arrest involving firearms. That's to contrast with Officer Ahmed who said he made at least 10 arrests for firearms and over 40 for guns that he assisted in and Officer Boylan said that he has made three arrests for firearms and he has assisted in over 150.

But the case I do want to mention that the court should consider in this overall evaluation of the facts of this case is *People v. Proclilo*. And that's just to determine: First, whether the officers had a reasonable basis to believe the defendant had a gun in his possession. Second, whether the officer's approach of the defendant and seizure of the gun was reasonable under the circumstances. Third, any evidence that the officer's effected pretext stop or frisk were otherwise motivated by any improper purpose.

I ask that you find that their actions at every stage of this encounter was reasonable. That what they learned during the interaction with the defendant necessitated the need to effectuate a frisk and that it ultimately did warrant a stop, this interaction with the defendant.

With respect to the Huntley portion of this hearing, the People do have the burden to establish voluntariness of the defendant's statement beyond a reasonable doubt. There are two relevant statements that

1 came out during this hearing. One that the defendant  
2 acknowledged. During that time it was one officer asking  
3 the defendant what he had in his bag. He had no weapons or  
4 guns drawn. The defendant was not restrained or in  
5 handcuffs in this way. The second relevant one is the  
6 defendant in the RMP said that he had it for protection,  
7 while he was in the back of the RMP. The defendant was on  
8 the phone with his mother somehow, it seems through his air  
9 pod, no one was asking him questions, according to Officer  
10 Ahmed, and so the defendant was speaking without being  
11 asked any questions.

12 Thank you, your Honor.

13 THE COURT: Thank you.

14 Thank you both.

15 I make the following findings of fact:

16 Police Officer Shahzeb Ahmed has been with the New  
17 York City Police Department for approximately five years.  
18 Currently assigned to Patrol Borough Manhattan North. Over  
19 the course of his career, he has made about 100 arrests and  
20 assisted in approximately another 100.

21 Police Officer Daniel Boylan has been with the  
22 Police Department for about seven years. He is currently  
23 assigned and has been for the last three months to the 52nd  
24 Detective Squad, but before that, for about six months,  
25 including on April 23, 2022, he was working Public Safety

1 for Patrol Borough Manhattan North.

2 On that date, April 23, 2022, Officer Ahmed had  
3 been working from 5:30 in the afternoon, scheduled to work  
4 until 2:05 in the morning, doing patrol in an unmarked  
5 car, in uniform, with Officer Boylan and Officer Burgos.  
6 They were patrolling within the confines of the 23rd  
7 Precinct.

8 I find Officer Ahmed to be credible in all  
9 respects. I have severe doubts as to the credibility of  
10 Officer Boylan, however, because of his demeanor on the  
11 stand, his evasiveness and apparently unwillingness to  
12 answer some of counsel's questions on cross examination,  
13 particularly those questions involving his credibility  
14 itself. That is, particularly questions involving his  
15 prior experiences with the Civilian Complaint Review  
16 Board.

17 And I further find that he has had not just  
18 numerous complaints with the Civilian Complaint Review  
19 Board, but numerous substantiated complaints with the  
20 Civilian Complaint Review Board, including substantiated  
21 complaints of using excessive force on citizens, as well as  
22 violating police procedure by not completing daily  
23 activity logs when he is supposed to, as he again did in  
24 this case, by not activating his body worn camera when  
25 was supposed to, including as he did in this case.

1                   For all of those reasons, I do not find officer  
2                   Boylan to be credible.

3                   I therefore make the following findings:

4                   Between 11:25 and 11:30 in the evening both  
5                   officers were in their car on 110th Street and Lexington  
6                   Avenue in New York County. Because earlier in the day,  
7                   about 9 or 9:30 in the evening, there had been ShotSpotter  
8                   report from 112th Street and Lexington Avenue, about two  
9                   blocks away, the officers responded, and when Officer Ahmed  
10                  in the car passed by the area, he saw Evidence Collection  
11                  team officers, they confirmed there had been a confirmed  
12                  ShotSpotter incident earlier as described, and he saw the  
13                  other officers were also present.

14                  At that time, around 11:25 or 11:30, he was in his  
15                  car facing southbound on Lexington Avenue when he observed  
16                  an individual who turned out to be and was identified as  
17                  the defendant, walking west on 110th Street toward the  
18                  corner of Lexington Avenue. The defendant was seen by  
19                  Officer Ahmed along with another female and two other  
20                  people on Citi Bikes and all of them were heading, and the  
21                  defendant was walking westbound on 110th Street toward  
22                  Lexington Avenue, while looking around from shoulder to  
23                  shoulder continuously and not making any eye contact with  
24                  the female who was talking to him and attempting to engage  
25                  in conversation, and instead just continued to look around

1 from shoulder to shoulder, which drew the officer's  
2 attention and appeared to some degree be suspicious.

3 He also noticed that the defendant had a fanny  
4 pack across his body, which the officer further noticed was  
5 very heavy, in that whatever was inside of it was causing  
6 it not to move or swing as an empty or lighter fanny pack  
7 would do as someone walked with it. He specifically saw a  
8 rectangular object that was, he used the word, protruding,  
9 but it became ultimately clear he meant essentially bulging  
10 out through the fabric of the fanny back, not actually  
11 sticking outside of the fanny pack, which at all times  
12 remained zipped and closed.

13 To the extent that I credit Officer Ahmed and not  
14 Officer Boylan, the specific difference in their testimony  
15 relates to the notable difference, which relates to the  
16 shape of the outline of the object that could be seen in  
17 the fanny pack. Officer Ahmed saw a rectangular object,  
18 which he testified could be consistent with virtually  
19 anything, whereas Officer Boylan testified that he saw an  
20 L-shaped object, which, of course, would be much more  
21 indicative of a firearm.

22 I find that there was a rectangular object that  
23 could be seen through the fanny pack because I credit  
24 Officer Ahmed's observations over Officer Boylan's.

25 Officer Ahmed observed the group of four for a

1 little over a minute and then while still in the car  
2 approached, began to approach first by crossing over the  
3 intersection to the southwest side, where he continued  
4 to make further and the same observations and then  
5 ultimately turned the car around and actually in the car  
6 approached toward where the defendant and the group were  
7 standing.

8 At no time did the officers draw their weapons and  
9 at no time did they turn on the lights or sirens of the  
10 vehicle.

11 Officer Boylan approached first and Officer Ahmed  
12 was about five seconds behind. As he could get closer, he  
13 got a better look at the fanny pack which was black but  
14 still continued to see the same thing, that a hard  
15 rectangular shape was bulging from the fanny pack.

16 Officer Boylan, as I said, approached the  
17 defendant first and asked the defendant what he had in the  
18 fanny pack, to which the defendant responded "nothing."  
19 Officer Boylan then immediately reached out and grabbed the  
20 fanny pack to frisk it, while the defendant stepped back,  
21 pulling the fanny pack away from Officer Boylan, and by  
22 necessity, if not ultimately, preventing and making it more  
23 difficult for Officer Boylan to reach and feel the fanny  
24 pack as he had intended.

25 As Officer Ahmed approached, he observed all of



1 that and also observed Officer Boylan ultimately grab and  
2 frisk the fanny pack, which when Officer Boylan felt it,  
3 they would feel the firearm inside and then unzip the fanny  
4 pack, confirming with his eyes that he was able to see the  
5 firearm, as did Officer Ahmed, at which point Officer  
6 Boylan again reclosed the zipper and the defendant was  
7 placed under arrest.

8           Officer Ahmed took the fanny pack off of the  
9 defendant's body. Defendant was initially resistant to the  
10 arrest, noncompliant, and didn't want to get into the  
11 police car. By the time Officer Ahmed got closer and had  
12 joined Officer Boylan, the defendant was able to be placed  
13 in the car and during his transport back to the police  
14 precinct the defendant in response to no questions said  
15 that he had the firearm for protection.

16           Also in the police car, the defendant having had  
17 air pods, in which the police had not noticed, was able  
18 somehow to place a phone call to his mother and stated that  
19 he had been arrested with a gun.

20           In addition to the firearm, also recovered what  
21 was inside of the fanny pack, there were a number of other  
22 items.

23           I reach the following conclusions of law:

24           Starting with the Fifth Amendment claims, the  
25 defendant's response to the police officer's question as to

1 what he had in the fanny pack, which was "nothing," was  
2 asked while the defendant was not in custody and therefore  
3 did not need to be preceded by Miranda warnings, and  
4 suppression of that statement under the Fifth Amendment is  
5 denied. There was also no classic due process violation or  
6 involuntariness. The defendant was not coerced into making  
7 that statement. The police had no guns drawn and had not  
8 physically or otherwise coerced it in any way.

9 With respect to the statements he made in the  
10 police car, that he had the firearm for protection, as well  
11 as what he said to his mother over the phone, that he had  
12 been arrested with a gun, neither of those statements were  
13 in response to any questions to the defendant while in  
14 custody. There was no custody statements. Those were  
15 spontaneous statements and did not need to be preceded by  
16 Miranda warnings.

17 Therefore, the motion to suppress those statements  
18 on Fifth Amendment grounds is denied.

19 I don't know whether there were other statements  
20 noticed. I raise that only because I see and saw on the  
21 People's exhibit list that they originally handed up that  
22 one item, which was never introduced into evidence or  
23 referred to, I think it was a Mirandized interview. In  
24 any event, that interview, if there was such a thing, was  
25 not testified to during the hearing and certainly was not

1 established to have been voluntary beyond a reasonable  
2 doubt. And if there was some later statement that is  
3 alleged to have been Mirandized, the People did not meet  
4 their burden in establishing that statement was voluntary,  
5 and that statement, to whatever extent it exists, is  
6 suppressed, assuming as well as that it was noticed.

7 As to the Fourth Amendment, the observations that  
8 the defendant was looking over his shoulder while in  
9 possession of a fanny pack that had an object in it,  
10 notably had an object in it, which was seen to be  
11 rectangular, provided an objective credible reason for the  
12 police to approach to request information, not necessarily  
13 indicative of criminality. That is a Level 1 request for  
14 information, that was not based on no articulable reason or  
15 a hunch and was not for any discriminatory reason and  
16 therefore the police did have the right to approach and ask  
17 basic Level 1 non-incriminating questions.

18 Assuming that there was some suspicion in the fact  
19 that a person walking down a dark New York City street  
20 looks over his shoulders to be aware of his surroundings  
21 and who else might be on the street or what else might be  
22 going on in certain neighborhoods, assuming that there is  
23 anything suspicious in doing that, then, as I said, that  
24 provided articulable reason to approach, but is not  
25 indicative of criminality in any way and necessarily does

1 not rise to the level of a founded suspicion that  
 2 criminality is afoot, nor does it become that by virtue of  
 3 the fact that someone observes a fanny back, which some  
 4 people might carry guns in and plenty of people might not  
 5 carry guns in. They might carry other things that aren't  
 6 guns as well, including things that are rectangular, as the  
 7 officer himself testified. The fact that it was  
 8 rectangular did not to him signify that it must or even was  
 9 more likely than not to be a gun. It could just as well as  
 10 have been anything at all. All of that provided a right to  
 11 request information but not a founded suspicion that  
 12 criminality, possession of a firearm was afoot.

13 And that is not changed by virtue of the fact that  
 14 there had been a report of ShotSpotter hours earlier and  
 15 blocks away. There are sad to say these days reports of  
 16 shots fired constantly and lots of places. And the fact  
 17 that there was a report unconnected to this defendant or  
 18 this group of defendants as to which there was no  
 19 description that they matched and to which the People  
 20 concede they were never under suspicion as having been  
 21 connected to this shots fired at all, can't raise the level  
 22 of suspicion as to this defendant other than to the extent,  
 23 that the fact that we live in the city with a lot of crime  
 24 or in a precinct with a lot of crime puts the police on  
 25 heightened alert to look for crime, all of which is well

1 and good and fine and fair, but it doesn't raise the level  
2 of the objective information available to them when they  
3 see certain conduct on the street.

4 And I would note in particular that somewhat  
5 contrary to the People's argument, the subjective intent  
6 of the officers is not at issue under the level of DeBour,  
7 it is an objective test and the information available to  
8 them must objectively provide the requisite level of  
9 suspicion.

10 Certainly in New York there is no good faith  
11 exception to the Fourth Amendment and the New York State  
12 constitutional equivalent and the fact that the officer,  
13 even if he turned out to be correct, had some suspicion  
14 which was based on something other than the objective  
15 information available to and observable to him, in essence  
16 that he was suspicious of people who had fanny packs and  
17 therefore he had something in the nature of a hunch about  
18 this defendant that didn't also pertain to the other three  
19 people that he was with, doesn't change the level of  
20 information that was objectively available to him. And so  
21 he had a Level 1 right to request information when he  
22 approached a person on the street not suspected of an  
23 earlier shots fired, even in a neighborhood or a couple of  
24 blocks from a place where shots had been fired hours  
25 earlier, and in seeing that the person observed a fanny

1 pack which had something in it which was rectangular, not  
2 L-shaped.

3 I do want to note that had I made a finding that  
4 it was L-shaped would be inconsistent with the observations  
5 of Officer Ahmed, but claimed by the observations of  
6 Officer Boylan, or put differently, had Officer Ahmed  
7 observed an L-shaped object, that would significantly  
8 change the calculation and that would in fact, in my view,  
9 have given the police reasonable suspicion. But Officer  
10 Ahmed did not see an L-shaped object from the same vantage  
11 point as Officer Boylan was, and therefore, for all the  
12 reasons I have already stated, I don't credit that Officer  
13 Boylan saw a different shape than the shape that Officer  
14 Ahmed credibly testified that he saw.

15 So when the police approach the defendant with an  
16 articulable credible reason not indicative of criminality  
17 and therefore had a right to request information, they were  
18 permitted under Level 1 of DeBour only to ask  
19 non-incriminating general questions about identity and  
20 purpose and things of alike, specifically could not ask as  
21 in Holman either for consent to search a bag or what is in  
22 a bag. That would require and that would constitute  
23 without question, "What is in the bag," which constitutes a  
24 Level 2 common law inquiry, which would require the level  
25 of information necessary and requisite to a common law

1 inquiry, specifically a founded suspicion that criminal  
2 activity was afoot.

3 At the time they asked, "What is in the fanny  
4 pack," they did not have a founded suspicion that criminal  
5 activity was afoot particularized to this defendant as  
6 opposed to perhaps in some very global sense in the breath  
7 that day, and therefore, the defendant's response, and  
8 therefore, they were not permitted to ask that question and  
9 even had that constituted a Level 1 permissible question  
10 under Level I, it would -- withdrawn.

11 They did not have a founded suspicion that  
12 criminal activity was afoot and therefore could not engage  
13 in a common law inquiry.

14 Assuming that the question, "What you have in the  
15 fanny pack," could lawfully asked under a Level I, which is  
16 the only degree of intrusion they were permitted to engage  
17 in, then the patently false answer "nothing" would and  
18 could only raise the level of suspicion up to a common law  
19 inquiry, which would then clearly permit the police to ask  
20 more pointed incriminating questions and additional  
21 questions and continue to ask questions perhaps until they  
22 obtained reasonable suspicion. But since it was not a  
23 common law inquiry and a common law inquiry was not  
24 justified in the first place, the answer "nothing,"  
25 which was clearly inconsistent with the facts known to the

1 police, they could see with their eyes there was not  
2 nothing in the bag, there was instead something in the bag,  
3 would not have risen and did not cause the level of  
4 suspicion, which at that point would otherwise have been a  
5 common law inquiry, to rise to the level of reasonable  
6 suspicion.

7 Therefore, at no point did the police have  
8 reasonable suspicion, because there is no credible  
9 testimony that an L-shaped object was found, and because  
10 even if the heightened suspicion provided by the  
11 defendant's untruthful answer of "nothing" did not provide  
12 reasonable suspicion, when it was coupled only with the  
13 very low degree of suspicious information or of information  
14 at all already available to the police, that is, that a  
15 person had a fanny pack with a rectangular object in this  
16 after having looked over his shoulder multiple times, none  
17 of that gave rise to reasonable suspicion. Therefore,  
18 Officer Boylan was not justified and it was unlawful for  
19 him to immediately frisk the defendant or frisk the  
20 defendant's bag absent reasonable suspicion.

21 I do reject the defendant's contention that what  
22 the police engaged in was a full blown search. It  
23 certainly was a frisk. Had it been of a pocket and they  
24 frisked the outside of it and they felt a gun, then, of  
25 course, they're allowed to reach into the pocket to take



1 the gun out and don't have to leave it in the pocket.  
 2 That doesn't make the frisk, which had been a frisk, and  
 3 had been a proper search. Similar here, if they were  
 4 permitted to conduct a frisk, they were permitted to pat  
 5 down and feel the outside of the bag, and if in feeling the  
 6 bag they felt a firearm, then it doesn't become a search by  
 7 virtue of the fact that they open the zipper and take that  
 8 firearm away from the defendant who could otherwise use it  
 9 and possess a grave danger to him and everyone.

10 Defendant is, of course, correct that in order to  
 11 justify a frisk of a weapon there needs to be not only  
 12 reasonable suspicion that a crime was being or had been  
 13 committed to justify a Level 3 tops, but also additional  
 14 reasonable suspicion that he was armed and dangerous.  
 15 Here, of course, had there been reasonable suspicion to  
 16 believe there was a gun in the fanny pack, that would  
 17 inherently provide reasonable suspicion not merely to stop  
 18 but also to frisk. So there would not need to be any  
 19 additional information available to the police to be  
 20 permitted to frisk the bag, the fanny pack, if they had  
 21 reasonable suspicion to believe there was a gun inside,  
 22 including, for example, had Officer Ahmed testified there  
 23 was an L-shaped object that could be even protruding or  
 24 bulging from the bag. But since the police did not have  
 25 reasonable suspicion at all either to stop or frisk, the

1 seizure and the frisk of the bag and the recovery of the  
2 firearm as well as all other items within the fanny pack  
3 that was seized upon a frisk and recovered were unlawful  
4 and the firearm as well as the other objects recovered,  
5 the other items recovered from the fanny pack, are  
6 suppressed.

7 How do the People wish to proceed?

8 I apologize.

9 And the statements therefore are also suppressed,  
10 not on the Fifth Amendment ground, but as a fruit of the  
11 Fourth Amendment violation.

12 MS. LAURIE: Just one moment.

13 THE COURT: And actually let me supplement by  
14 saying one last point, which is, as I have said, the fact  
15 there were shots fire earlier doesn't ultimately impact on  
16 the legality or the illegality of the police conduct here,  
17 and in particular, I would just note that to the extent  
18 that it's not the subjective intent of the officers that  
19 matter but the objective information available to them, the  
20 mere fact that there had been shots fired earlier in the  
21 day may have in fact made them suspicious in some way, but,  
22 again, it didn't change their ability to objectively  
23 assess based on their observations the defendant's  
24 actions.

25 (Brief pause.)

1 THE COURT: While you are considering it, can I  
2 ask you, you did earlier file a supplemental certificate of  
3 compliance, on the last page under the newest provisions to  
4 the statute you have to explain the reason why you are  
5 filing a supplemental. The reason for the delay.

6 MS. LAURIE: At the end you see, "Please see  
7 Appendix 1 here for further explanation."

8 THE COURT: I didn't see Appendix 1.

9 MS. LAURIE: I provided the discovery disclosure  
10 list. That is what I intended to be for an appendix.

11 THE COURT: Thank you.

12 MS. KNIZHNIK: Just for clarity, your Honor, I  
13 also had moved to suppress any DNA evidence that was  
14 obtained as a result of the search and seizure in  
15 this case. The DNA that was obtained from the water  
16 bottle.

17 THE COURT: Well, I am not convinced that that was  
18 subject to suppression in this context. As we all know,  
19 you can't suppress the body. So the defendant was in fact  
20 arrested, you can't suppress the body. If there is an  
21 abandonment as to which he has no reasonable expectation of  
22 privacy, I don't know that there is standing to move to  
23 suppress that.

24 MS. KNIZHNIK: Well, your Honor, I would ask to  
25 then be permitted to write on that issue.

1 THE COURT: Let's find out whether it's going to  
2 be relevant.

3 MS. LAURIE: Your Honor, can I just have two  
4 minutes so I can call my supervisor?

5 THE COURT: Of course.

6 MS. KNIZHNIK: May we have a bathroom break?

7 (Brief pause.)

8 MS. LAURIE: Well, your Honor, two points. We  
9 would ask for an adjournment to do the dismissal on  
10 recommendation. I just want to bring up though that there  
11 was a third officer who was present during this interaction  
12 who obviously I didn't call for the hearing today as I  
13 thought we had enough. But if you would give us leave to  
14 reopen the hearing --

15 THE COURT: The Court of Appeals could not be  
16 clearer that that is completely illegal. You are not  
17 allowed to reopen the hearing just to win what you lost the  
18 first time, where you're asking for an adjournment to do  
19 the dismissal on recommendation.

20 THE COURT: Okay.

21 Do you need to do a dismissal on recommendation in  
22 a situation like that as opposed to simply just moving to  
23 dismiss?

24 MS. LAURIE: We also want to take time to review  
25 the minutes, your Honor.

1 THE COURT: All right. Will two weeks suffice?  
2 Will you be able to do that?

3 MS. LAURIE: Sure.

4 THE COURT: But just so we're all clear, you are  
5 having now spoken with your supervisor, the decision has  
6 already been made that the People will be willing to  
7 dismiss, you will be preparing the dismissal on  
8 recommendation?

9 MS. LAURIE: Not yet.

10 THE COURT: Sometimes in analogous situations that  
11 you are needing time to decide what you are going to  
12 prepare or not, you have spoken and you have made your  
13 decision?

14 MS. LAURIE: Well, your Honor, I am trying to  
15 read the room. I don't want to ask for time to review  
16 if I can't be granted it. I would like to review the  
17 minutes.

18 THE COURT: Of course, you can review the minutes,  
19 that is certainly fine. I assume a decision like that  
20 involves supervisory input one way or the other. I take  
21 it, I will read the room and I am just trying to confirm,  
22 having spoken with your supervisors, the office's decision,  
23 this is a situation where you are going to need to  
24 dismiss?

25 MS. LAURIE: It is likely going that way, but we

1 do need time to review.

2 THE COURT: Fair enough.

3 How about, can we do November 3rd at 2 o'clock?

4 MS. KNIZHNIK: That's fine for me.

5 MS. LAURIE: Yes, that works.

6 THE COURT: We will put it on November 3rd at 2  
7 o'clock. If you are going to move to dismiss, you will  
8 move to dismiss. If you determine that a dismissal on  
9 recommendation is necessary per the office's custom and  
10 policy, obviously there is a real requirement, make sure  
11 that the paperwork is prepared in time so that it's ready  
12 to be given on November 3rd and you are not coming in here  
13 on that date to request a further adjournment then for that  
14 same purpose.

15 We also have left the buccal swab was going to be  
16 provided today. Obviously, we're not going to do that.  
17 We're going to hold that in abeyance pending the dismissal.  
18 But if anything changes, the only alternative under the  
19 statute, obviously, you are going to dismiss or decide that  
20 you have the basis for appeal, you are going to seek a stay  
21 essentially and file a notice of appeal and then the  
22 proceedings go on, if we get there.

23 But if it gets up to that, which it sounds like  
24 almost certainly it won't, I want to be clear, if we do on  
25 the next date, when you make that record, the buccal swab

order having already been issued, which I am not pressing as I say at this point, I am at that point going to require that the buccal swab be provided. Because, if not, by the time the case goes all the way through the appeal process and we're years from now, I am not going to have a buccal swab provided at that point. It first has to undergo testing which is months more. So it's going to be trial ready. It's going to be in a posture where it will be trial ready. If the appeal is provided, it doesn't sound like that, you should be prepared if you are not dismissing to take the buccal swab and have your officers ready.

MS. LAURIE: Thank you. I will see everybody November 3rd.

Supervised release continued.

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Certified to be a true and accurate transcription of the minutes taken in the above-captioned matter.

*Theresa Magniccari*

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Theresa Magniccari

Senior Court Reporter